
University of London

608078

B I L L S,

PUBLIC:

SEVEN VOLUMES.

—(6.)—

QUARTER SESSIONS (BOROUGHS)

TO

SUPREME COURT OF JUDICATURE (IRELAND).

Session

8 *February* —— 14 *August* 1877.

VOL. VI.

1877.

B I L L S

PUBLIC:

SEVEN FOLDERS.

—(6)—

QUARTER SESSIONS (BOROUGHS)

TO

SUPREME COURT OF JUDICATURE (IRELAND).

Session

VOL. VI.

BILLS:

1877.

SEVEN VOLUMES:—CONTENTS OF THE

SIXTH VOLUME.

N.B.—*THE* Figures *at the* beginning of the line, *correspond with the* N° *at the foot of each* Bill; *and the* Figures *at the* end of the line, *refer to the* MS. Paging *of the Volumes arranged for The House of Commons.*

Quarter Sessions (Boroughs):

144. Bill to amend the Law relating to the Division of Courts of Quarter Sessions in Boroughs - - - - - - - - - - - - - - p. 1

Racecourses (Licensing):

54. Bill for licensing Racecourses - - - - - - - - - - 5

Railway Passengers Protection:

98. Bill for the better Protection of Railway Passengers - NOT PRINTED. 9

Rating of Short Tenancies (Dublin):

274. Bill to declare and amend the Law relating to the Rating of Premises held for Short Tenancies in the City of Dublin - - - - - - - - 11

Real Estate Intestacy:

40. Bill for the better settling the Real Estates of Intestates - - - - - 15

Registered Writs Execution (Scotland):

133. Bill to amend the Form of Warrant of Execution on certain Extracts of Writs registered in the Books of Council and Session and Sheriff Court Books in Scotland; and to provide for the Authentication of certain Extracts of Writs - - - - - - - - - - - - - - - 19

267. Lords' Amendments to the Registered Writs Execution (Scotland) Bill - 25

Registration of Borough Voters:

38. Bill to amend the Law with respect to the Registration of Borough Voters in England and Wales - - - - - - - - - - - - - 29

115. Same [as amended in Committee] - - - - - - - - - - 57

Registration of Leases (Scotland) Act (1857) Amendment:

246. Bill to amend "The Registration of Leases (Scotland) Act, 1857" - - p. 85

Removal of Wrecks [H. L.]:

181. Bill, intituled, An Act to facilitate the removal of Wrecks obstructing Navigation - - - - - - - - - - - - - - 89

Reservoirs:

132. Bill to give further facilities to Landowners of limited interests in England and Wales to charge their Estates with the Expenses of constructing Reservoirs for the storage of Water and other similar purposes - - - - - - 93

249. Lords' Amendments - - - - - - - - - - - - 97

Roads and Bridges (Scotland):

65. Bill to alter and amend the Law in regard to the Maintenance and Management of Roads and Bridges in Scotland - - - - - - - - - 99

214. Same [as amended in Committee] - - - - - - - - - 149

Roads and Bridges (Scotland) (No. 2):

72. Bill to amend the Law in regard to the Management and Maintenance of Roads and Bridges in Scotland - - - - - - - - - - 209

Royal Irish Constabulary:

203. Bill to fix the Salaries of the Members of the Royal Irish Constabulary, and to amend the Eleventh Section of the Constabulary (Ireland) Amendment Act, 1870 - - - - - - - - - - - - - - 263

Saint Catherine's Harbour, Jersey:

251. Bill to provide for the transfer to the States of Jersey of Saint Catherine's Harbour and certain Lands near it - - - - - - - - - 267

Saint Stephen's Green (Dublin):

167. Bill to vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park, and for other purposes - - - - - - - - - - - - - 271

216. Same [as amended by the Select Committee] - - - - - - - 283

Sale of Food and Drugs Amendment:

264. Bill to amend "The Sale of Food and Drugs Act, 1875" - - - - - 295

Sale of Intoxicating Liquors on Sunday:

83. Bill to prohibit the Sale of Intoxicating Liquors on Sunday in England and Wales - - - - - - - - - - - - - - 299

Sale of Intoxicating Liquors on Sunday (Ireland):

59. Bill to prohibit the sale of Intoxicating Liquors on Sunday in Ireland - 303

160. Same [as amended by the Select Committee] - - - - - - - 307

Sea Fisheries (Ireland):

44. Bill for the regulation and encouragement of the Coast and Deep Sea Fisheries of Ireland (*not printed*) - - - - - - - - - - - p. 311

Settled Estates:

61. Bill to consolidate and amend the Law relating to Leases and Sales of Settled Estates - - - - - - - - - - - - - - 313

61A. Memorandum showing the Amendments proposed to be made by the Bill - 333

200. Lords' Amendments - - - - - - - - - - - - 335

Sheriff Courts (Scotland):

209. Bill to amend the Law in regard to the appointment of Sheriffs Substitute and Procurators Fiscal in Scotland; to extend the Jurisdiction of and amend the Procedure in the Sheriff Courts of Scotland, and for certain other purposes connected therewith - - - - - - - - - - - 337

Sligo Borough (Ireland):

68. Bill to constitute the Municipal Town of Boyle, the Borough of Sligo, and the Municipal Town of Ballina into a Parliamentary Borough, to be called the Borough of Sligo - - - - - - - - - - - 345

Solicitors Examination, &c. [H.L.]:

190. Bill, intituled, An Act for regulating the Examination of Persons applying to be admitted Solicitors of the Supreme Court of Judicature in England, and for otherwise amending the Law relating to Solicitors - - - - - 349

Solway Salmon Fisheries:

250. Bill to make certain provisions in regard to the Salmon Fisheries in the Solway Firth and its Affluents - - - - - - - - - - - 363

South Africa [H.L.]:

195. Bill, intituled, An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union, and for purposes connected therewith - - - - - 371

271. Same [as amended in Committee] - - - - - - - - - 391

Summary Jurisdiction Amendment:

137. Bill to amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction - - - - - - - - - - - 411

173. Same [as amended in Committee] - - - - - - - - - 439

278. Same [as amended in Committee and on Re-commitment] - - - - - 467

Summary Jurisdiction (Ireland):

127. Bill to amend the Law relating to Cases of Summary Jurisdiction in Ireland, and the Punishment of Offenders under the Prevention of Crimes Act, 1871 - 495

Summary Jurisdiction (Ireland) Amendment (No. 2):

159. Bill to amend the Law relating to Courts of Summary Jurisdiction in Ireland, 499

185. Same [as amended in Committee] - - - - - - - - - 515

Summary Prosecutions:

9. Bill to amend the Law relating to Summary Procedure before Justices; to extend the Right of Appeal in certain cases, and for other purposes relating to the Administration of Justice - - - - - - - - - - p. 531

Superannuation (Mercantile Marine Fund Officers):

224. Bill to make provision respecting the Superannuation Allowance of Officers whose Salaries were formerly payable out of the Mercantile Marine Fund - - 539

Supreme Court of Judicature:

103. Bill for amending the Supreme Court of Judicature Acts, 1873 and 1875 - 543

Supreme Court of Judicature (Ireland):

66. Bill for the constitution of a Supreme Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland - - - 547

184. Same [as amended in Committee] - - - - - - - - - 607

260. Same [as amended in Committee and on Re-commitment] - - - 679

A

B I L L

TO

Amend the Law relating to the Division of Courts of Quarter Sessions in Boroughs. A.D. 1877.

WHEREAS by the Act of the session of the seventh year of William the Fourth and the first of Her Majesty, chapter nineteen, provision is made for the better despatch of business in courts of quarter sessions for corporate cities or towns by the division of such courts, and by the appointment of an assistant barrister to preside in one division of any such court:

And whereas under the provisions of the said Act a resolution of the town council approving of the exercise of the powers of the said Act is required upon each occasion upon which such powers are proposed to be exercised, and it is provided that the assistant barrister and the assistant officers of the court shall not be entitled to claim remuneration for more than two days:

And whereas it is expedient to amend the said Act as herein-after mentioned:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where a resolution of the council of a corporate city or town approving of the exercise of the powers of the recited Act has been passed and certified as directed by the first section of the said Act, the resolution and the certificate thereof shall, if the resolution so provides, continue in force during *twelve months* from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary. Amendment of 7 W. 4. and 1 Vict. c. 19.

[Bill 144.]

A.D. 1877.

Increase of time for which assistant barrister and others may be remunerated.

2. It shall be lawful for the council of any corporate city or town, with the consent of one of Her Majesty's principal Secretaries of State, from time to time, by resolution, to extend from two to not exceeding *four*, the number of days for which an assistant barrister, assistant clerk of the peace, or additional crier, shall be entitled to claim remuneration under the provisions of the recited Act; any such resolution may be made for such period, and subject to revocation in such manner as the said Secretary of State approves.

Quarter Sessions (Boroughs).

A

B I L L

TO

Amend the Law relating to the Division of Courts of Quarter Sessions in Boroughs.

(*Prepared and brought in by Mr. Torr, Mr. Wheelhouse, Mr. Chamberlain, and Mr. Birley.*)

Ordered, by The House of Commons, *to be Printed*, 24 *April* 1877.

[Bill 144.]

Under 1 *oz.*

A

B I L L

FOR

Licensing Racecourses.

A.D. 1877.

WHEREAS the frequency of horse-races in the immediate vicinity of the metropolis is productive of much mischief and inconvenience, and the holding of such races in thickly populated places near the metropolis is calculated to cause, and does in fact cause, annoyance and injury to persons resident near to the places where such races are held :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

Definitions.

1. A horse-race within the meaning of this Act shall mean any race in which any horse, mare, or gelding shall run, or be made to run in competition with any other horse, mare, or gelding, or against time, for any prize of what nature or kind soever, or for any bet or wager made or to be made in respect of any such horse, mare, or gelding, or the riders thereof, and at which more than *twenty* persons shall be present.

Horse-races unlawful within ten miles of London unless licensed.

2. *From and after the twenty-fifth day of March one thousand eight hundred and seventy-eight* it shall not be lawful that any horse-race be held or take place on any pretext whatsoever within a radius of *ten* miles from Charing Cross in the City of Westminster, unless in a place for which a license for horse-racing has been obtained pursuant to the provisions herein-after contained.

Power to justices to license at Michaelmas quarter sessions.

3. Any person desirous of obtaining a license for horse-racing for any open or enclosed land or place, being the owner, lessee, or occupier of such land or place, may apply to the justices assembled at any Michaelmas quarter sessions of the peace to be holden for the county, city, riding, liberty, or division in which such land or place is situate, which justices are hereby empowered to grant or withhold a license at their discretion, such license to be of force and valid for

A.D. 1877.

twelve months dating from the *twenty-fifth day of March* next following the date of such application.

Mode of making application for license.

4. Every such application shall be made to the justices in the same manner as applications for licenses for places to be kept for public dancing, music, or other entertainment under the provisions of an Act passed in the twenty-fifth year of His late Majesty King George the Second.

Penalty on persons taking part in unlicensed horse-races.

5. Any person who after the said *twenty-fifth day of March one thousand eight hundred and seventy-eight* shall take part in any horse-race in any open or enclosed land or place for which a license is required under this Act, and for which a license has not been obtained, shall upon summary conviction be liable to a penalty of *ten pounds*, or an imprisonment not exceeding *two months*.

Penalty on owners and occupiers of ground where unlicensed horse-races take place.

6. Any person who shall be the owner or lessee, or in possession or occupation of any open or enclosed land or place for which a license for horse-racing is required under this Act, and upon which any horse-race shall be held after the said *twenty-fifth day of March one thousand eight hundred and seventy-eight* without such license having been obtained, shall be guilty of a misdemeanor, and on conviction thereof shall be punishable for every such offence with *fine or imprisonment at the discretion of the court*, such fine not to be less than *ten pounds* nor more than *fifty pounds*, and such imprisonment not to be less than *one month* nor more than *three months*.

Unlicensed horse-races to be deemed a nuisance, and liable accordingly.

7. Every horse-race held or taking place in contravention of the provisions of this Act shall be deemed to be a nuisance, and any person injured or inconvenienced thereby shall have all such rights and remedies against all persons taking part in the same and against owners, lessees, and occupiers of the land or place as he would have in case of a nuisance at common law.

Exemption in favour of long existing horse-race meetings.

8. If the owner, lessee, or occupier of any open or enclosed land or place who shall apply to the justices for a license for horse-racing for such land or place shall prove to such justices that for a period of *twenty years* before the passing of this Act horse-races have been usually held in such place, the justices shall be bound to grant such license, unless there shall be produced to them a warrant from one of Her Majesty's Secretaries of State, which warrant such Secretary is hereby empowered at his discretion to issue, directing that such races shall be discontinued.

Short title.

9. This Act may be cited as "The Racecourses Licensing Act, 1877."

Racecourses (Licensing).

A

B I L L

For licensing Racecourses.

(*Prepared and brought in by Mr. Anderson, Sir James Lawrence, and Sir Thomas Chambers.*)

Ordered, by The House of Commons, *to be Printed*, 9 *February* 1877.

[Bill 54.]

Under 1 *oz.*

A

B I L L

TO

Declare and amend the Law relating to the Rating of Premises held for Short Tenancies in the City of Dublin. A.D. 1877.

WHEREAS by the sixty-third section of an Act of Parliament passed in the thirteenth year of the reign of Her Majesty the now Queen, it was enacted as follows; that is to say, "that the "owners of all rateable property of which the full net annual value of "eight pounds, or which are let to weekly or monthly tenants or "in separate apartments, shall be rated to and pay the rates by this "Act directed to be made instead of the occupiers thereof":

And whereas by the nineteenth section of the Representation of the People, Ireland, Act, 1868, it was, amongst other things, enacted that, "so far as regards poor rates in respect of such lands, tenements, "and hereditaments, of which the net annual value shall be more "than four pounds, the sixty-third section of the herein-before "recited Act should be and the same was thereby repealed":

And whereas doubts have arisen whether, notwithstanding such repeal, the rating of tenements by the collector of rates in the city of Dublin is not regulated by the provisions of the said sixty-third section, so far as relates to weekly and monthly tenants, and in consequence of such doubts many of such tenants in the city of Dublin have been omitted from the rates made by him, and from the list of occupiers transmitted by him to the town clerk pursuant to the provisions of the Representation of the People Act, 1868, whereby many of such persons have been deprived of their franchise in the said city:

Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

1. From and after the passing of this Act the said nineteenth section of the Representation of the People, Ireland, Act, 1868, shall

A.D. 1877. be deemed and held effectually to repeal the said sixty-third section of the previously recited Act of the thirteenth year of Her Majesty's reign as to all lands, tenements, and hereditaments of which the value shall be more than four pounds, although same shall be held by weekly and monthly tenants.

Rating of Short Tenancies (Dublin).

A

BILL

To declare and amend the Law relating to the Rating of Premises held for Short Tenancies in the City of Dublin.

(*Prepared and brought in by Mr. Butt, Mr. Maurice Brooks, and Mr. Gray.*)

Ordered, by The House of Commons, *to be Printed*, 31 *July* 1877.

[Bill 274.]

Under 1 *oz.*

A

B I L L

FOR

The better settling the Real Estates of Intestates.

A.D. 1877.

Preamble.

WHEREAS it is expedient that the law of succession to real estate in cases of persons hereafter dying intestate should be the same as the law of succession to personal estate in the like cases:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

In cases of persons dying intestate, all real estate, or proceeds of sale thereof, to be dispose d in same manner as if same had been held for a term of years only.

1. That when and so far as any person beneficially seised of or entitled to any real estate shall, after the first day of January one thousand eight hundred and seventy-eight, die intestate as to such real estate, the same shall go to and vest in the executor or administrator of such person, and the same (or the proceeds of the sale thereof, which sale the said executor or administrator is hereby empowered to make,) shall be applied and disposed of as assets of such deceased person, and be divided and distributed in the same proportions and manner to all intents and purposes as if the same had been held by such deceased person for a term of years only, and the court entitled to grant probate or administration of the goods and chattels of any person shall be authorised and is hereby required to include in such grant such real estate as aforesaid.

Such real estate may be divided by way of partition. Court of Chancery to make order, &c.

2. The executor or administrator may, at the request of the persons entitled to such real estate under the enactment aforesaid, divide and apportion the same by way of partition unto and amongst the said persons so entitled respectively; and the Chancery Division of the Supreme Court of Judicature, or any judge thereof, shall be authorised and empowered to give such directions, and to make such orders and decrees upon the summary application of the said executor or administrator or of the said parties entitled, or of

A.D. 1877. either of them, as to such court or judge shall seem most expedient for the more effectually carrying into effect the provisions of this Act; and such court or judge shall be authorised and empowered to make such orders as to the costs of and incident to such application as to such court or judge shall seem meet.

Real Estate Intestacy.

A

BILL

For the better settling the Real Estates of Intestates.

(*Prepared and brought in by Mr. Potter, Mr. Leatham, Mr. Hopwood, Mr. Price, and Sir Wilfrid Lawson.*)

Ordered, by The House of Commons, *to be Printed,* 9 *February* 1877.

[Bill 40.]

Under 1 *oz.*

A

B I L L

TO

Amend the Form of Warrant of Execution on certain Extracts of Writs registered in the Books of Council and Session and Sheriff Court Books in Scotland; and to provide for the Authentication of certain Extracts of Writs. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Writs registered in Books of Council and Session to have warrant of registration annexed.

1. It shall not be necessary to insert warrants for execution in all extracts of writs, deeds, or other documents registered in the Books of Council and Session in Scotland, on which execution may competently proceed, but only in the extracts of such as are registered for preservation and execution: Provided that all writs, deeds, or other documents (not being protests of bills, promissory notes, or bankers notes, or certificates of judgment registered for execution under the Judgments Extension Act, 1868) shall, when presented for registration, have annexed or subjoined thereto a warrant specifying that the same are to be registered for preservation, or for preservation and execution, as the case may be, in the form, or as nearly as may be in the form, of Schedule (A.) hereto annexed: And in every such writ, deed, or other document registered for preservation and execution, the warrant for execution shall be registered along with the said writ, deed, or other document in the Books of Council and Session, and shall be in the form, or as nearly as may be in the form, of the Schedule (B.) to this Act annexed.

Form of warrant of execution.

The warrants for execution inserted in the extracts of all protests and certificates of judgment as aforesaid shall also be in the form, or as nearly as may be in the form, of the said Schedule (B.) to this Act annexed.

Extracts of writs registered in Sheriff Court

2. In every extract of a writ, deed, or other document registered in the Sheriff Court Books of any county in Scotland on which execution may competently follow, and in every extract of a protest of a

A.D. 1877.

bill, promissory note, or banker's note registered in the Sheriff Court Books, the sheriff clerk, when requested by the party or parties interested, shall insert a warrant of execution in the form, or as nearly as may be in the form, of Schedule (B.) to this Act annexed.

Books to have warrant of execution in certain cases.

Competent to arrest, charge and poind by virtue of the extract, with warrant for execution thereon.

3. It shall be lawful by virtue of the extract of any writ, deed, or other document of the nature referred to in the two preceding sections, and relative warrant for execution thereon, to arrest the readiest goods, debts, and sums of money of the debtor or obligant mentioned in such extract, in payment and satisfaction of the sum of money or pecuniary obligation therein specified, as also to charge the debtor or obligant therein mentioned to pay the sum of money, or to perform the obligation therein specified within the appropriate days of charge, under the pain of poinding and imprisonment, so far as competent, the terms of payment or implement being first come and byegone, and if he fail to obey the said charge, then, so far as competent, to apprize, poind, and distrain all his readiest goods, gear, and other effects, in payment and satisfaction of the said sum or pecuniary obligation, and also in the same event, and within a year and day of the expiry of said charge, so far as competent, to search for, take, and apprehend the person of the debtor or obligant, and being so apprehended to imprison him within a tolbooth or other warding place therein to remain until he fulfil said charge, and to magistrates and keepers of prisons to receive and detain the debtor or obligant accordingly; and if necessary for said poinding or apprehension, to open shut and lockfast places.

Warrants of execution unchallengeable on certain grounds.

4. It shall not be competent to challenge the validity of extracts of writs, deeds, or other documents, or of extracts of protests of bills, promissory notes, or banker's notes or certificates of judgment as aforesaid, registered in the Books of Council and Session, or in the Sheriff Court Books, containing warrants of execution, and issued prior to the commencement of this Act from the offices of the register of deeds and probative writs and protests in the Books of Council and Session, or of sheriff clerks respectively, on the ground that the forms of such warrants are not in conformity with those prescribed by the Act passed in the first and second years of the reign of Her Majesty Queen Victoria, chapter one hundred and fourteen.

Extracts of deeds registered in the Books of Council and Session, and Register of

5. Extracts of all writs, deeds, or other documents of what nature soever, which may be registered in the Books of Council and Session, shall be equivalent to the registered writs, deeds, or other documents themselves, except where any writ, deed, or other document so registered shall be offered to be improven, and such

extracts shall be signed, on the last page thereof, by the keeper or assistant keeper of the register of deeds and probative writs and protests in the Books of Council and Session; and extracts of all writs registered in, and issued from the office of the General Register of Sasines, shall be signed on the last page thereof, by the keeper of the said register, or by a deputy duly commissioned by him to that effect, and no further signature on any other page of such extracts shall be necessary. But each sheet of all such extracts shall be impressed with an office seal or stamp to be kept in the respective offices of the said keepers; provided that it shall be necessary and sufficient in the case of marginal additions occurring in any extract that the same shall be authenticated by the initials of the officer certifying such extract.

Sasines to be authenticated.

6. Whereas, in terms of the twelfth section of the Act passed in the forty-ninth year of the reign of His Majesty King George the Third, chapter forty-two, the volumes of records of the Books of Council and Session are, along with the warrants thereof, periodically transmitted by the keeper of the register of deeds and probative writs and protests in the Books of Council and Session, to the Lord Clerk Register or his deputies; be it enacted that the deputy keeper of the records or any officer holding a commission to that effect from the Lord Clerk Register may, at any time, issue extracts one or more, of any writ, deed, or other document registered in said volumes of records transmitted as aforesaid, in the same or in a similar form to the extracts of such writs, deeds, or other documents which might have been issued previous to such transmission. And all such extracts and the warrants of execution therein contained shall have all the like force and effect as any extract from the Books of Council and Session, made and issued previous to such transmission, or as any warrant of execution contained in or appended to such extract; and in all extracts issued as aforesaid it shall be sufficient that the last page thereof shall be signed by the said deputy keeper of the records or by any officer duly commissioned by the Lord Clerk Register to that effect, and no further signature on any other page of such extracts shall be necessary, but each sheet of all such extracts shall be impressed with an office seal or stamp to be kept in the office of the Lord Clerk Register; provided that it shall be necessary and sufficient in the case of marginal additions occurring in any such extract that the same shall be authenticated by the initials of the officer certifying such extract.

After transmission of volumes of records of Books of Council and Session to the Lord Clerk Register, the Deputy Keeper of Records may issue extracts of any deeds recorded in said volumes, and authenticate same.

7. This Act shall take effect from and after the *first day of July one thousand eight hundred and seventy-seven*, and shall apply to Scotland only.

Commencement and extent of Act.

A.D. 1877.

SCHEDULE A.

WARRANT of REGISTRATION on Writ, Deed, or other Document to be registered in the Books of Council and Session.

Register for preservation (*or* preservation and execution) in the Books of Council and Session.

(Signed) *A.B.*
or C.D., W.S., Edinburgh, Agent,
or E., F., & G., W.S., Edinburgh, Agents,
(*or as the case may be*).

SCHEDULE B.

EXTRACT of Writ, Deed, or other Document registered in the Books of Council and Session or Sheriff Court Books.

At the day of One thousand eight hundred and the deed (*if registered in the Books of Council and Session, add* with warrant of registration thereon) herein-after engrossed, was presented for registration in the Books of the Lords of Council and Session (*or* Sheriff Court Books of the county of) for preservation (*or* for preservation and execution), and is (*if registered in the Books of Council and Session, add* with said warrant of registration) registered in the said books as follows :—

(*Insert full copy of the deed*; (*if registered in the Books of Council and Session insert also the warrant of registration*), *and where the deed is registered for execution, insert warrant for execution as follows*) :—

And the said Lords grant (*or* the Sheriff grants, *as the case may be*) warrant for all lawful execution hereon.

Extracted, *&c.*

The form of the warrant subjoined to the extracts of Sheriff Court Decrees to be similar to that subjoined to deeds registered for execution.

Registered Writs Execution (Scotland).

A

B I L L

To amend the Form of Warrant of Execution on certain Extracts of Writs registered in the Books of Council and Session and Sheriff Court Books in Scotland; and to provide for the Authentication of certain Extracts of Writs.

(*Prepared and brought in by The Lord Advocate and Mr. Secretary Cross.*)

Ordered, by The House of Commons, *to be Printed*, 12 *April* 1877.

[Bill 133.]

Under 1 *oz.*

LORDS AMENDMENTS

TO THE

REGISTERED WRITS EXECUTION (SCOTLAND) BILL.

Note.—*The page and line refer to the Bill* (144.) *as first printed by the Lords.*

Page 1.

Line 5, leave out clause 1. and insert clause (A.)

Extracts of writs registered in Books of Council and Session to have, in certain cases, warrants for execution.

(A.) In all extracts of writs, deeds, or other documents which contain a clause of registration for preservation and execution, and which are registered in the register of deeds and probative writs and protests in the Books of Council and Session in Scotland, the keeper or assistant keeper of the said register shall insert a warrant for execution in the form, or as nearly as may be in the form of the Schedule to this Act annexed.

Form of warrant of execution inserted in extracts of all protests and certificates of judgment.

The warrants for execution inserted in the extracts of all protests of bills, promissory notes or bankers notes, or certificates of judgment registered for execution under the Judgments Extension Act, 1868, shall be as nearly as may be in the form of the said Schedule to this Act annexed.

Line 26, leave out from (" In ") to (" shall ") in page 2, line 3, and insert (" all extracts of writs, deeds, or other documents " which contain a clause of registration for preservation and " execution, and which are registered in the Sheriff Court " Books of any county in Scotland, and in all extracts of " protests of bills, promissory notes, or bankers notes regis- " tered in the Sheriff Court Books, the sheriff clerk ")

Page 2.

Line 4, leave out (" Schedule (B.) ") and insert (" the " Schedule ")

Line 5, leave out from (" the ") to the second (" the ") in line 6, and insert (" warrant inserted in any extract under " the provisions of ")

[Bill 267.]

Page 2.

Line 7, leave out ("and relative warrant for execution "thereon")

Line 10, after ("sum") insert ("or sums") and leave out ("pecuniary") and after ("obligation") insert ("or "obligations")

Line 12, after ("sum") insert ("or sums") and after ("obligation") insert ("or obligations")

Line 18, leave out from ("or") to ("and") in line 25, and insert ("sums or obligation or obligations")

Line 25, after ("for") insert ("effecting") and leave out ("or "apprehension")

Page 3.

Line 12, leave out ("initials") and insert ("signature")

After clause 5, insert clause (B.) :

Writs registered in the Register of Sasines for preservation only may afterwards be registered for preservation and execution.

(B.) Where any writ containing in gremio thereof a procuratory or clause of registration for preservation and execution shall have been registered in the General Register of Sasines upon a warrant of registration for preservation but not for execution, it shall be competent to present for registration in the said register an extract of such registered writ having a warrant of registration written thereon, bearing that such extract is to be registered for preservation and execution ; and it shall be lawful to register such extract accordingly, and to issue one or more extracts thereof with warrant of execution in terms (mutatis mutandis) of Schedule B. annexed to the Land Registers (Scotland) Act, 1868, and every such warrant of execution shall have all the like force and effect as any warrant of execution issued in terms of the twelfth section of the said last-mentioned Act ; and in making such subsequent registration it shall not be necessary to engross ad longum in the said register the extract so presented, but the registration thereof may be effected by the insertion of a memorandum of such extract in the appropriate division or divisions of said register, setting forth the volume of the register and the folio or folios of such volume in which said original writ is engrossed, and the insertion of such memorandum shall be deemed equivalent to the full engrossment in the division or divisions of the register in which such memorandum shall be entered as aforesaid of the extract so presented for registration.

Line 31, after ("aforesaid") insert ("and also in all extracts "issued of writs contained in any record in the custody of "the Lord Clerk Register")

Page 3.

Line 40, leave out ("initials") and insert ("signature")

Line 42, leave out ("July") and insert ("October")

Page 4.

Leave out the schedules and insert a new schedule:

SCHEDULE.

At the day of One thousand eight hundred and , the deed herein-after engrossed was presented for registration in the Books of the Lords of Council and Session (*or* Sheriff Court Books of the county of) for preservation (*or* for preservation and execution), and is registered in the said books as follows:—

(*Insert full copy of the deed; and where the deed is registered for execution, insert warrant for execution as follows*):—

And the said Lords grant (*or* the Sheriff grants, *as the case may be*) warrant for all lawful execution hereon.

Extracted, *&c.*

LORDS AMENDMENTS

TO THE

REGISTERED WRITS EXECUTION (SCOTLAND) BILL.

Ordered, by The House of Commons, *to be Printed*,
30 *July* 1877.

[Bill 267.]

Under 1 *oz.*

Registration of Borough Voters Bill.

ARRANGEMENT OF CLAUSES.

Preliminary.

Clause.
1. Short title.
2. Application of Act.
3. Extent of Act.
4. Commencement of Act.
5. Definitions.

PART I.—QUALIFICATION.

6. Explanation of terms "dwelling-house," "warehouse," &c.
7. Definition of lodger.
8. Qualification of lodger.
9. Successive qualifications.
10. Period of qualification.

PART II.—REGISTRATION.

Preparation of Lists.

11. Alteration of dates.
12. Notice as to borough rates.
13. Arrangement of lists, &c.
14. Preparation of burgess lists with parliamentary lists.
15. Application of Parliamentary Registration Acts to burgess lists.
16. Publication of overseers lists.
17. Lists of persons qualified to be aldermen or councillors, but not to be burgesses.

Claims and Objections.

18. Claims by lodgers retaining same lodgings in successive years.
19. Grounds of objection to be specified in notice.

Revision of Lists.

Clause.
20. Duties and powers of revising barrister.
21. Proceedings on objection to voters.
22. Declaration of lodgers to be primâ facie proof of title.
23. Declaration by persons changing place of abode, &c.
24. Costs of objection.
25. Appeal against decision of revising barrister.
26. Power to make rules for proceedings at revision courts.

Miscellaneous.

27. Registrars to furnish notices of deaths to overseers.
28. List of persons disqualified by parochial relief.
29. Correction of burgess roll.
30. Provision where register wanting or defective.
31. Inaccuracies in register and burgess roll.
32. Election of Assessors.
33. Expenses and receipts.
34. Forms in schedule, &c.
35. Saving for existing registers and burgess rolls.
36. Repeal of 6 Vict. c. 18. s. 40, as to boroughs.

Schedule.

A

B I L L

TO

Amend the Law with respect to the Registration of Borough Voters in England and Wales. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This Act may be cited as the Registration of Borough Voters Act, 1877.

Application of Act.

2. This Act shall not apply to the election of members to serve in Parliament for counties, or for the universities of Oxford, Cambridge, or London.

Extent of Act.

3. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

4. This Act shall come into operation on the *first day of May one thousand eight hundred and seventy-eight*, which date is in this Act referred to as the commencement of this Act.

Definitions.

5. In this Act, unless the context otherwise requires—

The term "Reform Act, 1832," means the Act of the second year of the reign of King William the Fourth, chapter forty-five, intituled "An Act to amend the representation of the people "in England and Wales :"

The term "Municipal Corporation Acts" means the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to "provide for the regulation of municipal corporations in "England and Wales," and the Acts amending the same :

The term "Parliamentary Electors Registration Act, 1843," means the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen, intituled "An Act to amend the law for the registration of persons

A.D. 1877.

" entitled to vote, and to define certain rights of voting, and to " regulate certain proceedings in the election of members to " serve in Parliament for England and Wales:"

The term "Parliamentary Electors Registration Acts" means the Parliamentary Electors Registration Act, 1843, and any enactment amending the same, or otherwise relating to the registration of parliamentary electors:

The term "parliamentary borough" means a city or borough as defined by the Parliamentary Electors Registration Act, 1843:

The term "municipal borough" means any place for the time being subject to the Municipal Corporation Acts:

The term "borough" includes parliamentary and municipal borough:

The term "parliamentary elector," used in relation to any borough, means a person entitled to vote at the election of any member or members to serve in Parliament for that borough:

The term "burgess" has the same meaning as in the Municipal Corporation Acts:

The term "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

Other terms used in this Act have the same meaning as in the Parliamentary Electors Registration Acts.

PART I.—QUALIFICATION.

Explanation of terms "dwelling-house," "warehouse," &c.

6. In and for the purposes of the Reform Act, 1832, and the Municipal Corporation Acts, the terms "warehouse, counting-house, shop, or other building," shall include any part of a house, where that part is separately occupied for purposes of business, and a separate poor rate is or can be made in respect of that part at any time during the qualifying year; and any such part may, for the purpose of qualification, be described as "office," "chambers," "studio," or by any like term applicable to the case.

In and for the purposes of the Representation of the People Act, 1867, the term "dwelling-house" shall include any part of a house where that part is separately occupied as a residence, and a separate poor rate is or can be made in respect of that part at any time during the qualifying year.

Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall be deemed to be separately occupied notwithstanding that the occupier is entitled to the joint use of any other part of the house.

A.D. 1877.

Definition of lodger.

7. Every person who pays rent in respect of his residence, and is not an inhabitant occupier of a dwelling-house within the meaning of section three of the Representation of the People Act, 1867, shall be deemed a lodger within the meaning of section four of that Act.

Qualification of lodger.

8. With respect to the qualification of lodgers, the following provisions shall have effect:

(1.) Lodgings occupied by a person in any year or two successive years shall not be deemed to be different lodgings by reason only that in that year, or in either of those years, he has, in addition to those lodgings, also occupied some other room or place.

(2.) For the purpose of qualifying a lodger to vote, the occupation in immediate succession of different lodgings in the same house shall have the same effect as continued occupation of the same lodgings.

(3.) Where lodgings are jointly occupied by more than one lodger, and the clear yearly value of the lodgings, if let unfurnished, is of an amount which when divided by the number of the lodgers gives a sum of not less than ten pounds for each lodger, then each lodger, if otherwise qualified, shall be entitled to be registered, and when registered to vote as a lodger.

Successive qualifications.

9. Different qualifications held in immediate succession by any person shall have the same effect in qualifying him to vote as a continued holding of the same qualification: Provided that if one of the qualifications is in respect of lodgings, the person shall not be entitled to vote unless he claims in the same manner in which lodgers are required to claim.

Period of qualification.

10. The period of qualification for parliamentary electors and burgesses shall end on the *twenty-fourth day of June* in each year instead of on the last day of July.

Part II.—Registration.

Preparation of Lists.

Alteration of dates.

11. In parliamentary boroughs the precept to be sent to overseers under the Parliamentary Electors Registration Acts, including this Act, shall be sent on or before the *tenth day of May* instead of on or before the tenth day of June, and the notice to be given by overseers under those Acts for payment of rates and taxes shall be given on or before the *twentieth day of May* instead of on or before the twentieth day of June, and the payment of such rates and taxes shall be made

A.D. 1877.

on or before the *twentieth day of June* instead of on or before the twentieth day of July, and the lists of persons who have not paid such rates shall be made out on or before the *twenty-second day of June*, and kept for perusal during fourteen days after the *twenty-second day of June* instead of on or before or after the twenty-second day of July.

Notice as to borough rates.

12. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the overseers of every parish situate wholly or partly in the municipal borough shall, on or before the *twentieth day of May* in every year, publish a notice in writing stating that no person will be entitled to have his name inserted in any burgess list for the borough then next to be made in respect of property within that parish, unless he pay on or before the *twentieth day of June* then next ensuing all the poor rates (including borough rates, if any,) which have become payable from him in respect of those premises during the twelve calendar months next before the *fifth day of January* then last past.

Arrangement of lists, &c.

13. The lists of parliamentary voters and registers of parliamentary electors in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate.

Preparation of burgess lists with parliamentary lists.

14. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the overseers of every parish situate wholly or partly either in the parliamentary or in the municipal borough shall, on or before the *last day of July* in every year, make out or cause to be made out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by the Representation of the People Act, 1867 (otherwise than as lodgers), to be registered as voters for the parliamentary borough in respect of the occupation of property situate wholly or partly within that parish, or entitled to be enrolled as burgesses for the municipal borough in respect of the occupation of any property so situate; and with respect to every list so made out, the following provisions shall have effect:

(1.) The lists shall be in substitution for the lists of persons so entitled which are required to be made out under the Parliamentary Electors Registration Acts and the Municipal Corporation Acts.

(2.) Where the parish is situate wholly or partly both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions:

Division one shall comprise the names of the persons entitled both to be registered as parliamentary voters and to be enrolled as burgesses.

Division two shall comprise the names of the persons entitled to be registered as parliamentary voters but not to be enrolled as burgesses.

Division three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters.

(3.) In each list the surname and other name of every person whose name is inserted therein shall be written at full length, together with the place of his abode, and the nature of his qualification, and the name of the street, lane, or place, and the number of the house, if any, or other description of the place where the property in respect of which he is entitled is situate.

(4.) Each list, or if the list is made out in divisions, each division shall be signed and otherwise dealt with in manner directed by the Parliamentary Electors Registration Acts with respect to the alphabetical lists mentioned in section thirteen of the Parliamentary Electors Registration Act, 1843.

(5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough.

(6.) Where no part of the parish is situate within the parliamentary borough, the list for the parish shall be deemed to be a burgess list for the municipal borough.

(7.) Where the list is made out in divisions, divisions one and two shall be deemed to be lists of voters for the parliamentary borough, and divisions one and three shall be deemed to be burgess lists for the municipal borough.

(8.) The lists and each division thereof may, according to convenience for use, be framed in parts for polling districts or wards, and where the polling districts and wards are not conterminous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists.

Application of Parliamentary

15. The provisions of the Municipal Corporation Acts shall not apply to any burgess list made out under this Act, and instead

A.D. 1877.

Registration Acts to burgess lists.

thereof the provisions of the Parliamentary Electors Registration Acts (including this Act) shall apply to every such burgess list as if it were a list of voters made out under those Acts, and as if the term "borough" as used in those Acts included municipal borough: Provided as follows:

(1.) Nothing in this Act shall authorise a person entered on a burgess list, not being also a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or any person entered on a list of parliamentary voters, not being also a burgess list, to make an objection in respect of a burgess list;

(2.) The last day for revising a burgess list made out under this Act shall be the *fifteenth day of October*; and

(3.) The burgess lists when revised shall be dealt with in manner directed by the Municipal Corporation Acts.

Publication of overseers lists.

16. Any list which is by the Parliamentary Electors Registration Acts or this Act directed to be published by overseers, shall be published by them, not only in the manner prescribed by those Acts, but also by being affixed and kept in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and every public municipal or parochial office within the parish to which the list relates.

All the provisions of those Acts with respect to the publication of lists shall apply to the publication to be made under this section.

Lists of persons qualified to be aldermen or councillors, but not to be burgesses. See 32 & 33 Vict. c. 55. s. 3.

17. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the separate lists required to be made of the persons entitled to be elected councillors or aldermen of the municipal borough, but not entitled to be on the burgess roll of that borough, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with respect to the burgess lists shall apply to those separate lists.

Claims and Objections.

Claims by lodgers retaining same lodgings in successive years. See 6 Vict. c. 18. s. 4.

18. Where a person is entered in respect of lodgings on the register of voters for the time being in force, and desires to be entered in the next register in respect of the same lodgings, he may claim to be so entered by sending notice of his claim to the overseers of the parish in which his lodgings are situate on or before the *twentieth day of July*.

The overseers shall, on or before the *last day of July*, make out a list of all persons so claiming, and if they have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered, or is dead, shall add in the margin of the list opposite his name the words "objected to" or "dead," as the case may be.

The lists so made out shall be signed, published, and otherwise dealt with in the same manner as the alphabetical lists mentioned in section thirteen of the Parliamentary Electors Registration Act, 1843, and shall for the purposes of the Parliamentary Electors Registration Acts be deemed to be lists of voters and not lists of claimants, and the persons against whose names the overseers have so written the words "objected to" or "dead" shall be deemed to be duly objected to.

Grounds of objection to be specified in notice. See 28 & 29 Vict. c. 36. s. 6.

19. A notice of objection to a person on a list of voters for a parliamentary borough, or a burgess list for a municipal borough, shall not be valid unless it specifies the grounds of objection.

Revision of Lists.

Duties and powers of revising barrister.

20. A revising barrister shall, with respect to the lists of voters which he is appointed to revise, perform the duties and have the powers following:

(1.) He shall insert in the proper list of voters the name of every person who has duly claimed to have his name inserted therein, and proves that he is entitled to have it so inserted.

(2.) He shall erase from the lists of voters the name of every person who, whether objected to or not, is proved to be dead or to be not entitled to have his name inserted therein, or who, if objected to, does not prove that he is entitled to have his name inserted therein.

(3.) He shall, where the name of any person is entered more than once on the lists of voters for the same parliamentary or municipal borough, on being satisfied that the entries relate to the same person, retain one of the entries and erase the other or others. Any such person may, by notice in writing delivered to the revising barrister at the opening of his first revision court, select the entry to be retained; but if he does not, the entry to be retained shall be selected by the revising barrister.

(4.) He shall, where the qualification in respect of which a person's name is entered in any list either of voters or of

A.D. 1877.

claimants is insufficient or inaccurate, but it is proved that the person is in fact entitled to have his name inserted in the lists of voters, either amend the list of voters in which the name is entered by substituting the correct qualification, or, as the case may be, insert the name with the qualification as proved in the proper list of voters.

(5.) He may amend any clerical or accidental mistake or omission in any list, claim, notice, or objection.

(6.) He may, by summons under his hand, require any person to attend at the court, and give evidence or produce documents for the purpose of the revision, and any person who, after the tender to him of a reasonable amount for his expenses, fails so to attend, or who fails to answer any question put to him by the revising barrister in pursuance of this section, or to produce any document which he is required in pursuance of this section to produce, shall be liable to pay such fine, not exceeding *five pounds*, as may be imposed by the barrister; and such fine may be recovered, and when recovered shall be applied in like manner as any other fine imposed by the revising barrister under the Parliamentary Electors Registration Acts.

Proceedings on objection to voters.

21. Where any person whose name is on any list of voters for a borough is duly objected to by some person other than the overseers, the revising barrister, whether the person objected to does or does not appear before him, shall, before requiring it to be proved that the person so objected to is entitled to have his name inserted in the lists of voters for the borough, or expunging his name, require primâ facie proof to be given to his satisfaction of the ground of objection against him, and for that purpose may himself examine and allow the objector to examine the overseers upon oath touching the truth of the alleged ground of objection.

If such primâ facie proof is not given to his satisfaction he shall retain the name of the person objected to in the lists of voters.

If such primâ facie proof is given to his satisfaction, and the person objected to does not appear before him, he shall not retain that person's name in the lists of voters.

Declaration of lodgers to be primâ facie proof of title.

22. In the case of a person claiming to vote as a lodger the statutory declaration annexed to his notice of claim shall, if duly made, be deemed for the purposes of revision to be primâ facie evidence of his qualification.

Declaration by persons changing

23. Any person whose name appears in any list of voters for a borough, and whose place of abode is not correctly stated in that

A.D. 1877.

place of abode, &c.

list, or who has received a notice of objection grounded on his place of abode and is otherwise qualified to have his name inserted on the list in respect of the qualification therein mentioned, may, if he think fit, make and subscribe a declaration as to his place of abode before any justice of the peace or any commissioner or other person authorised to administer oaths in the Supreme Court of Judicature.

All such declarations shall be duly dated, and shall on or before the day next but two before the first day for the holding of a court of revision be transmitted to the overseers of the parish in which the qualification to which the declaration relates is situate.

The overseers shall endorse on every such declaration the name of that parish, and the name of the person making the declaration, and also the date on which they received the same, and shall affix their initials to the endorsement, and shall deliver all such declarations to the revising barrister at his first court, arranged according to the alphabetical order of the parishes in the borough.

Every revising barrister shall, for the purpose of correcting the statement in the list of the place of abode of any such person, receive any such declaration, if transmitted to the overseers in due time (of which transmission the endorsement in that behalf by the overseers shall be primâ facie proof), as evidence of the place of abode of the declarant, and that without proof of the signature of the declarant, or of the justice, commissioner, or person before whom the declaration purports to have been subscribed, unless he has good reason to doubt the genuineness of any signature thereto.

All such declarations may be perused by any person at the office of the overseers, without payment of any fee, at any time between the hours of *ten* of the clock in the forenoon and *four* of the clock in the afternoon of any day, except Sunday, before the first day for the holding of any court of revision, and the overseers shall deliver copies of any such declaration to all persons applying for the same on payment of the price of *fourpence* per folio of seventy-two words.

Any person falsely or fraudulently signing any such declaration in the name of any other person, whether that person is living or dead, or in a fictitious name, and every person transmitting as genuine any false or falsified declaration, knowing the same to be false or falsified, and any person knowingly and wilfully making any false statement of fact in such declaration, shall be guilty of a misdemeanor, and punishable by fine or by imprisonment for a term not exceeding *one* year, and the revising barrister shall have power to impound any such declaration.

A.D. 1877.

Costs of objections.

24. Where any objection is made to any person appearing on any list of voters for any borough, and the name of the person so objected to is retained on or inserted in the list by the revising barrister, the revising barrister shall, unless for special reasons he otherwise determine, order costs, not less than *five* shillings, to be paid to the person objected to.

Appeal against decision of revising barrister.

25. If any person feels aggrieved by a revising barrister neglecting or refusing to state any case, he may apply to the High Court of Justice, upon affidavit of the facts, for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated, and thereupon the High Court, or any judge thereof in chambers, may, if it seem just, make such rule, and make the same absolute or discharge it with or without payment of costs, as may seem just, and the revising barrister on being served with any such rule absolute shall state the case accordingly, and the case shall be stated, and the appeal entertained and heard, notwithstanding any limitations of time or place contained in the Parliamentary Electors Registration Act, 1843.

Power to make rules for proceedings at revision courts.

26. One of Her Majesty's Principal Secretaries of State may from time to time make, and when made revoke and alter, rules for regulating the practice and course of procedure in the courts of revising barristers for the purposes of the Parliamentary Electors Registration Acts and of this Act.

All rules made under this section shall be laid before each House of Parliament within *forty* days next after the same are made, if Parliament is then sitting, and if not, within *forty* days after the then next meeting of Parliament, and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days, praying that any such rule be annulled, Her Majesty may by order in council annul the same, and any rule so annulled shall thenceforth be of no effect, but without prejudice to the validity of any proceedings in the meantime taken thereunder.

All such rules shall, while in force, have effect as if enacted in this Act.

Miscellaneous.

Registrars to furnish notices of deaths to overseers.

27. Every registrar of births and deaths whose sub-district includes the whole or part of any parliamentary or municipal borough shall furnish from time to time to the overseers of every parish the whole or any part of which is included in any such borough, and also in his sub-district, returns of the names and

residences of all male persons of full age dying within that parish or part, and, on the application of those overseers, returns of the names and residences of all women of full age dying within that parish or part.

The returns shall state the names of all such persons in full (where the names are known), and the dates of their deaths, and the names and residences of the persons by whom information of the deaths was given to the registrar.

The returns shall be furnished within *seven* days after the last day of each of the months of March, June, September, and December in every year, and shall respectively include the deaths during the three months next preceding those respective days.

It shall be the duty of the overseers to omit from any list made by them the name of any person who appears from such returns to be dead, and to allow any person who is registered as a parliamentary elector or enrolled as a burgess of the borough to which the returns relate, to inspect any such returns in their custody at all reasonable times.

Payment shall be made by the overseers to the registrar for the returns to be made by him at the rate of *five* shillings for every hundred names.

List of persons disqualified by parochial relief.

28. The overseers of every parish shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified for being inserted in the lists of parliamentary voters or burgess lists for that parish by reason of having received parochial relief; and the relieving officer, upon application from the overseers, within *twenty-one* days before the last day for the publication by the overseers of the lists of parliamentary voters and burgess lists, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons.

Correction of burgess roll.

29. Where a burgess roll is made up from burgess lists made out under this Act, the provisions of the Parliamentary Electors Registration Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll as if it were a register of parliamentary electors, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him.

Provision where register wanting or defective.

30. Every register of parliamentary electors shall, so far as it relates to any parish, continue to be in force with respect to that

A.D. 1877.

parish until another register of electors has come into force with respect to the same parish.

See 7 Will. 4. and 1 Vict. c. 78. s. 5.

A register of parliamentary electors shall not be invalidated by any want of title in the barrister by whom the lists from which it was formed were revised.

Inaccuracies in register and burgess roll.

31. It shall be the duty of every town clerk or other officer having the custody of a register of parliamentary electors or burgess roll to call the attention of the overseers of every parish to which the register or roll relates to any mistake or omission therein.

Election of assessors.

32. After the commencement of this Act assessors shall not be elected in any municipal borough which is wholly or partly coincident with a parliamentary borough, and any assessors elected in any such borough before the commencement of this Act shall cease to hold office upon the commencement of this Act.

Expenses and receipts.

33. Where a municipal borough is wholly or partly coincident with a parliamentary borough, one half of the expenses properly incurred by the town clerk and overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists shall be defrayed in the manner provided by the Parliamentary Electors Registration Acts, as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund; and one half of the moneys received by any town clerk by way of fines imposed in respect of any of those lists shall be applied in the manner directed by those Acts, and the other half paid into the borough fund.

Forms in schedule, &c.

34. The schedule to this Act and the notes thereto shall be construed and have effect as if enacted in the body of this Act, and the several forms in that schedule shall be used in substitution, and, for the purposes of the Parliamentary Electors Registration Acts, be deemed to be substituted, for the corresponding forms in the schedules to those Acts.

All precepts, instructions, proceedings, and notices relating to the registration of parliamentary electors or of burgesses shall be expressed in such manner and form as may be necessary to carry the provisions of this Act into effect.

Saving for existing registers and burgess rolls.

35. Nothing in this Act shall affect any register of electors or burgess roll in force at the commencement of this Act.

Repeal of 6 Vict. c. 18. s. 40. as to boroughs.

36. Section forty of the Parliamentary Electors Registration Act, 1843, is hereby repealed so far as it relates to elections for parliamentary boroughs.

SCHEDULE.

A.D. 1877.

Form A.

Form of Precept of the Town Clerk to the Overseers of any Parish wholly or partly situate in a Parliamentary Borough, or in a Municipal Borough wholly or partly coincident with a Parliamentary Borough.

†Parliamentary borough of † / *Municipal borough of * to wit. } To the overseers of the poor of the parish of [*or* township of]

Omit parts between crosses where no part of parish is in a parliamentary borough.

Omit parts between asterisks if no part of the parish is in a municipal borough.

In pursuance of the provisions of the Parliamentary Electors Registration Act, 1843, and the Registration of Borough Voters Act, 1877, I require your attention to the following

Instructions.

On or before the twentieth day of *May* you are to publish a notice [*or* notices], signed by you according to the form marked B. among the printed forms herewith sent.

Note.—Form B. in this schedule must be sent.

The manner in which you are required to publish that notice is as follows; (that is to say,) you are to fix one of the printed copies (each copy being first signed by you), on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [*or* township], including chapels which do not belong to the Established Church, and also in some public and conspicuous position on or near every post office or telegraph office occupied by or on behalf of Her Majesty's Postmaster-General, and every public municipal or parochial office in your parish [*or* township], or if there be no such church, chapel, or office, then in some public situation in your parish [*or* township], and it must remain there during a period including two Sundays at the least.

†Where any poor rate which it was your duty to collect was on the *first day of May* due from an occupier in respect of any premises capable of conferring the franchise for the said parliamentary borough, and remains unpaid on the *twentieth day of May*, you are to give to that occupier a notice in the form marked E. sent herewith, by delivering it to the occupier, or leaving it at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable. You need not serve this notice if the rate has been previously duly demanded by a demand note served in the like manner as the last-mentioned notice.†

Omit parts between crosses where no part of the parish is in a parliamentary borough.

Note.—A copy of the notice in Schedule E. to the Representation of the People Act, 1867, substituting the words "twentieth day of June" for the words "twentieth day of July," must be sent.

On or before the *twenty-second day of June* next you are to make out a list containing the name and place of abode of every person who has not paid on or before the *twentieth* day of the same month all poor rates which have become payable from him in respect of any premises within your parish [*or* township] before the *fifth day of January* last, and you are to keep that list to be perused by any person gratis at any time between 10 a.m. and 4 p.m. on any day, except Sunday, during the first fourteen days after the said *twenty-second day of June.*

A.D. 1877.

Omit part between crosses if no part of the parish is in a parliamentary borough.

Omit part between asterisks if no part of the parish is in a municipal borough.

Omit part between asterisks if no part of the parish is situate in a municipal borough, or if no part of the parish is in a parliamentary borough.

On or before the *last day of July* you are to make out a list of all persons who are †entitled under any right conferred by the Reform Act, 1832 (2 & 3 Will. 4. c. 45.), or the Representation of the People Act, 1867, (otherwise than as lodgers) to vote at an election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within your parish [*or* township] *or† entitled to be burgesses for the municipal borough of , in respect of the occupation of property situate wholly or partly within your parish [*or* township].*

* This list is to be made out in three divisions.

Division one is to comprise the names of the persons who are entitled to vote for a member [*or* members] to serve in Parliament, and also to vote as burgesses.

Division two is to comprise the names of the persons who are entitled to vote for a member [*or* members] to serve in Parliament, but not to vote as burgesses.

Division three is to comprise the names of the persons who are entitled to vote as burgesses, but not to vote for a member [*or* members] to serve in Parliament.*

Omit part between crosses if no part of the parish is in a parliamentary borough.

† On or before the *last day of July* you are also to make out a list of all persons who are entitled within your parish [*or* township] to vote at an election of a member [*or* members] to serve in Parliament for the said parliamentary borough in respect of any other right (except as freemen or as lodgers).

On or before the *last day of July* you are also to make out a list of all persons who being on the register of electors now in force for the said parliamentary borough in respect of residence within your parish [*or* township] in lodgings have duly claimed, on or before the *twentieth* day of July, to have their names inserted in the lists of voters for the said borough in respect of residence in the same lodgings.†

Note.–The appropriate form must be sent.

These lists are [*or* This list is] to be in the Form C. (*or, as the case may be,* D. *or* E.) sent herewith.

Omit part between asterisks if no part of the parish is in a municipal borough, but unless it is omitted, send Form F.

* On or before the *last day of July* you are also to make out a list (in the Form F. sent herewith) of all persons who are entitled, in respect of the occupation of property within your parish [*or* township], to be elected councillors or aldermen of the said municipal borough, but by reason of residence beyond seven miles of that borough are not entitled to be on the burgess roll thereof.*

Each of these lists is, so far as it relates to persons who are qualified in respect of property (including lodgings), to be arranged in the same order in which the qualifying premises appear in the rate book of your parish [*or* township], or as nearly thereto as will enable the list to record the qualifying premises in successive order in the street or other place in which they are situate.

Note.–A printed copy of the directions in the schedule must be enclosed.

In making out each of these lists you will follow the directions of which a copy is enclosed.

The period of qualification for all voters ends on the *twenty-fourth day of June.*

A.D. 1877.

On or before the *first day of August* you are to publish written or printed copies of these lists signed by you in the same manner as before mentioned with respect to the notice.

You are to keep a copy of these lists signed by you, and also a copy of the list of defaulters in payment of assessed taxes sent to you by the collector of taxes, to be perused by any person without payment of any fee at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the first fourteen days after the said lists of voters have been published, and to deliver a copy of any such list of voters to any person who requires the same on the payment of a price for each copy after the rate contained in the table marked Schedule D., No. 1, herewith sent.

Note.—A printed copy of the Table No. 1 in Schedule D. to 6 Vict. c. 18. must be enclosed.

You are to make out lists according to the forms marked I. sent herewith, containing the names of every person who has given or caused to be given to you, or any one of you, on or before the *twenty-fifth day of August* his claim to have his name inserted in any list of voters, making separate lists of—

Note.—Forms marked I. and K. must be sent.

(1.) Persons claiming to be entered in the lists of parliamentary electors otherwise than as freemen or lodgers; and

(2.) Persons claiming to be entered in the lists of parliamentary electors as lodgers who are not comprised in the above-mentioned list of lodgers; * and

(3.) Persons claiming to be entered in the lists of burgesses.*

Omit part between asterisks if no part of the parish is in a municipal borough.

You are also to make out lists according to the forms marked K., containing the names of every person against whom a notice of objection has been given to you, or any of you, on or before the *twenty-fifth day of August* as not being entitled to have his name retained in any list for your parish [*or* township], giving in separate lists the objections made to—

(1.) Any person on the list of parliamentary electors:

(2.) Any person on the list of lodgers published on the *last day of July*:

(3.) Any person on the list of burgesses.

Omit part between asterisks if no part of the parish is in a municipal borough.

On or before the *first day of September* you are to sign and publish each of those lists in the same manner as before mentioned with regard to the notice.

You are to keep a copy of each of the lists of claimants and persons objected to, signed by you, and you are to allow those copies, and also the original notices of objection, to be perused by any person without payment of any fee at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the *first fourteen days of September*, and you are to deliver a copy of each of those lists to any person requiring the same, on the payment of a price for each copy after the rate contained in the table marked Schedule (D.), No. 1, herewith sent.

If you find any such notice, list, or other document published by you as aforesaid to be destroyed, mutilated, effaced, or removed, you are forthwith to place another in its room to the same effect.

On or before the *twenty-ninth day of August* you are to deliver to me copies of—

(*a*) The lists of voters;

(*b*) The lists of persons claiming as lodgers;

A.D. 1877.

(*c*) The lists of other claimants; and

(*d*) The lists of persons objected to,

so respectively made out and signed by you as aforesaid.

You are to attend at the court to be holden for the revision of the lists of voters for this borough, of the time of holding which notice will be given; and at the opening of the court you are there to deliver to the barrister before whom the same shall be holden, the several lists made out and signed by you and the original notices of claims and of objections given to you.

Herein if you fail you will be liable to the penalties in that case provided.

Given under my hand this day of 18 .

(Signed) *A.B.*,
Town clerk.

Form B.

Notice to be given by the Overseers in a Parliamentary Borough.

Parliamentary borough of ,
in the county of ,
to wit.

We hereby give notice that no person will be entitled to have his name inserted in any list of parliamentary electors for this borough now about to be made.

(*a*) In respect of the occupation of any house, warehouse, counting-house, shop, or other building, or land occupied therewith, of whatever value, whether situate wholly or in part within this parish [*or* township], unless he pays on or before the *twentieth day of June* all the poor rates which have become due from him in respect of those premises during the twelve calendar months next before the *fifth day of January* last past; or

(*b*) In respect of the occupation of any house, or, in the case of a joint occupation, house (joint), warehouse, counting-house, shop, or other building, or land occupied therewith, of the clear yearly value of not less than ten pounds, unless he pays on or before the *twentieth day of June* all assessed taxes payable from him in respect of those premises before the *fifth day of January;*

and all persons who omit to make such payments will be incapable of being upon the next register of parliamentary electors for this borough in respect of those premises.

Dated this day of , in the year one thousand eight hundred .

(Signed) *A.B.*, *C.D.*, Overseers.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with the parliamentary borough.

Notice to be given by the Overseers in a Municipal Borough.

Municipal borough of ,
in the county of ,
to wit.

We hereby give notice that no person will be entitled to have his name inserted in any list of burgesses for this borough now about to be made

A.D. 1877.

in respect of the occupation of any house, warehouse, counting-house, shop, or other building, whether situate wholly or in part within this parish [*or* township], unless he pays, on or before the *twentieth day of June* all poor rates, including borough rates (if any), which may have become payable by him in respect of the said premises, up to the preceding *fifth day of January*, and all persons who omit to make such payment will be incapable of being upon the next burgess roll for this borough in respect of those premises.

Dated this day of , in the year one thousand eight hundred .

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.—Where a parish is situate within both a parliamentary borough and a municipal borough, both the above notices must be issued.

FORM C.

FORM of LISTS of VOTERS for a PARISH wholly or partly situate both in a PARLIAMENTARY BOROUGH and in a MUNICIPAL BOROUGH.

No. 1. LIST OF

† The persons entitled (otherwise than as lodgers), to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough of , in respect of the occupation of property wholly or partly within this parish [*or* township], *

and† the persons entitled to be enrolled as burgesses for the municipal borough of , in respect of the occupation of property wholly or partly within this parish [*or* township].*

Division One. Parliamentary Electors and Burgesses.

Brick Street.

1. Names of Voters in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.
Masters, Abel -	1, Brick Street -	House - -	1, Brick Street.
Smith, William -	Wood Villa, Gainsborough.	Building - -	2, Brick Street.
Brown, Thomas -	4, Brick Street -	Shop - -	4, Brick Street.
Abrahams, Samuel -	4, Brick Street -	House (joint) -	4, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

Division Two. Parliamentary Electors only.

Brick Street.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Stubbs, Thomas -	10, High Street -	- - -	4, Brick Street.
Adams, John -	24, Duke Street -	- - -	7, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

Division Three. Burgesses only.

Brick Street.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Thompson, Henry -	14, John Street -	Warehouse -	3, Brick Street.
Gardener, Mary -	10, Brick Street -	House - -	10, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2. LIST OF

The persons entitled to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of any other right (except as freemen or as lodgers).

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification	Name and Situation of Qualifying Property (if any).
Smith, John -	15, Cannon Street	Inhabitant householder, paying scot and lot.	30, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 3. LIST OF

The persons who being on the register of electors now in force for the parliamentary borough of , in respect of residence within the

A.D. 1877.

parish [*or* township] of in lodgings, claim, in respect of residence in the same lodgings, to have their names inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the said borough.

Brick Street.

Names of Claimants in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number, if any, of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.	Objections by Overseers.

(Signed) *A.B.*, *C.D.*, } Overseers.

FORM D.

FORM of LIST of Voters for a PARISH wholly or partly situate in a PARLIAMENTARY BOROUGH, but NOT in a MUNICIPAL BOROUGH.

This form is to be the same as Form C., omitting from list No. 1 the parts between asterisks, the words "*Division One. Parliamentary Electors and Burgesses*" in division one, and divisions two and three.

FORM E.

FORM of LIST of Voters for a PARISH wholly or partly situate in a MUNICIPAL BOROUGH, but not in a PARLIAMENTARY BOROUGH.

Note.–This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

This form is to be the same as Form C., No. 1, omitting the parts between crosses, the words "*Division One. Parliamentary Electors and Burgesses,*" and divisions two and three.

FORM F.

FORM of LIST of Occupiers in any Parish entitled under 32 & 33 Vict. c. 55. s. 3 to be elected as Councillors or Aldermen of a Municipal Borough, although not entitled to be on the Burgess Roll of that borough.

Note.–This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

List of persons who are entitled to be elected councillors or aldermen of the municipal borough of in respect of the occupation within the parish [*or* township] of of any property, but who, by reason of their residence beyond seven miles of the borough, are not entitled to be on the burgess roll of that borough.

A.D. 1877.

1. Names of Persons in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

FORM G.

FORM OF NOTICE OF CLAIM.

No. 1.—PARLIAMENTARY (General).

To the overseers of the parish [*or* township] of .

I claim to have my name inserted in the list made by you of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of the city] of , in respect of the qualification named below.

Dated the day of one thousand eight hundred and .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*

No. 2.—PARLIAMENTARY (Lodgers).

I claim to have my name inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of the city] of , in respect of the qualification named below.

Name of Claimant in full, Surname being first.	Description of Rooms occupied, and whether furnished or not.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.
Stevens, John William.	Two rooms, first floor, furnished.	51, Brick Street	16*s.* a week -	William Johnson, High Street.

I hereby declare that I have during the twelve calendar months immediately preceding the *twenty-fourth day of June* in this year occupied as sole tenant

A.D. 1877.

[*or* as joint tenant with ,] and resided in the above-mentioned lodgings, and that those lodgings are of a clear yearly value, if let unfurnished, of ten [*or* twenty] pounds or upwards.

Dated the day of .

(Signed) *A.B.*, (the Claimant.)

I, the undersigned, certify that I have witnessed the above signature of the above-named [*here state name of claimant*], at the date stated above, and that I believe the above claim to be correct.

(Signed) *C.D.*, of .

[*State residence and calling of witness.*]

Note.—If the claim is in respect of different rooms successively occupied as lodgings in the same house, the notice of claim must specify each room, or set of rooms, so occupied. If the claimant is on the register in respect of the same lodgings, and desires to have his name inserted in the list of lodger voters published on the *first of August*, he must send in this claim on or before the *twentieth of July*. In any other case he must send it in after the *last day of July* and on or before the *twenty-fifth of August*. If there are two joint lodgers the yearly value of the lodgings must be twenty pounds, if three, thirty pounds, and so on.

No 3.—Municipal.

To the overseers of the parish [*or* township] of .

I claim to have my name inserted in the list made by you of burgesses of the municipal borough [*or* city] of , in respect of the qualification named below.

Dated the day of one thousand eight hundred and .

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and situation of Qualifying Property.

(Signed) *A.B.*

Form H.

Form of Notice of Objection.

No. 1 (Parliamentary).

Notice of Objection to be given to Overseers.

To the overseers of the parish [*or* township] of .

A.D. 1877.

I hereby give you notice that I object to the name of being retained on the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the city [*or* borough] of , on the following grounds, viz. :—

1. *e. g.*, that he has not occupied for twelve months to June 24.
2. That
3.

Dated this day of .
(Signed) *A.B.*, of [*place of abode*] on the list of parliamentary voters for the parish of .

Note.—If there is more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

No. 2 (PARLIAMENTARY).

NOTICE of OBJECTION to be given to PERSON OBJECTED TO.

To Mr.

I hereby give you notice that I object to your name being retained on the lists of voters entitled to vote in the election of members [*or* a member] to serve in Parliament for the city [*or* borough] of , on the following grounds viz. :—

1. *e. g.*, that you have not occupied for twelve months to June 24.
2. That
3

Dated this day of .
(Signed) *A.B.*, of [*place of abode*] on the list of parliamentary voters for the parish of .

No. 3 (MUNICIPAL).

NOTICE of OBJECTION to be given to OVERSEERS.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

To the overseers of the parish [*or* township] of .
I hereby give you notice that I object to the name of being retained on the lists of burgesses of the borough [*or* city] of , on the following grounds, viz. :—

1. *e. g.*, that he has not occupied for twelve months to June 24.
2. That
3.

Dated this day of .
(Signed) *A.B.*, of [*place of abode*] on the list of burgesses for the parish of .

Note.—If the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

A.D. 1877.

No. 4 (MUNICIPAL).

NOTICE of OBJECTION to be given to PERSON OBJECTED TO.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

To Mr. .

I hereby give you notice that I object to your name being retained on the lists of burgesses of the borough [*or* city] of , on the following grounds, viz. :—

1. *e. g.*, that you have not occupied for twelve months to June 24.
2. That
3.

Dated this day of .

(Signed) *A.B.* of [*place of abode*] on the list of burgesses for the parish of .

FORM I.

FORM of LIST of CLAIMANTS to be PUBLISHED by the OVERSEERS.

No. 1.—GENERAL LIST OF CLAIMANTS (PARLIAMENTARY).

The following persons claim otherwise than as lodgers, to have their names inserted in the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of city] of .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2.—LIST OF LODGER CLAIMANTS (PARLIAMENTARY).

The following persons claim as lodgers to have their names inserted in the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of city] of .

Name of Claimant in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings are situate.	Amount of rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.

(Signed) *A.B.*, *C.D.*, } Overseers.

A.D. 1877.

No. 3.—LIST OF CLAIMANTS (MUNICIPAL).

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

The following persons claim to have their names inserted in the burgess roll for the municipal borough [*or* city] of

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

FORM K.

FORM of LIST of PERSONS OBJECTED to to be PUBLISHED by the OVERSEERS.

No. 1.—LIST OF PERSONS OBJECTED TO (PARLIAMENTARY).

The following persons have been objected to as not being entitled to have their names retained on the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of city] of .

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Nature and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2.—LIST OF LODGERS OBJECTED TO (PARLIAMENTARY).

The following persons have been objected to as not being entitled to have their names retained in the list of persons entitled to vote in respect of residence in lodgings in the election of a member [*or* members] to serve in Parliament for the parliamentary borough of .

Name of Person objected to in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.—This form applies only to the list of lodger claimants who claimed on or before the *twentieth day of July*, and were then on the register in respect of the same lodgings. The list of those lodgers who are objected to must be a separate list from that of other persons objected to.

No. 3.—List of Persons objected to (Municipal).

The following persons have been objected to as not being entitled to have their names entered on the burgess list for the municipal borough [*or* city] of .

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.

Directions for the guidance of Overseers in making out the lists.

(1.) The surname and other names of each person are to be written at full length, the surname being placed first.

(2.) Each of the lists should, so far as it relates to persons qualified in respect of property (including lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for your parish [*or* township], or as nearly thereto as will enable the lists to record the qualifying premises in successive order in the street or other place in which they are situate.

(3.) The place of abode should be entered in such a manner as will afford a sufficient address for a person entered if a letter is addressed to him by post.

A.D. 1877.

(4.) The qualification should be entered as nearly as possible in the words of the statute conferring the franchise, for instance:—

(*a*) The qualification of a person under the Representation of the People Act, 1867, should be stated thus, "house:"

(*b*) The qualification of a person under the Act 2 & 3 Will. 4. c. 45. (1832), should be stated thus: house, or in the case of a joint occupation, house (joint), warehouse, counting-house, shop, or building, as the case may be.

(5.) The above directions apply to the lists of claimants and persons objected to.

(6.) In making out the list of lodgers which you are to publish on the *first of August*, if you have reason to believe that any person whose name is entered on that list is dead, or is not entitled to vote, you must make a note to that effect in the last column of the list.

Registration of Borough Voters.

A

B I L L

To amend the Law with respect to the Registration of Borough Voters in England and Wales.

(Prepared and brought in by Sir Charles Dilke, Mr. Rathbone, and Mr. Beord.)

Ordered, by The House of Commons, *to be Printed,* 9 *February* 1877.

[Bill 38.] *Under* 4 *oz.*

Registration of Borough Voters Bill.

[AS AMENDED IN COMMITTEE.]

ARRANGEMENT OF CLAUSES.

Preliminary.

Clause.

1. Short title.
2. Application of Act.
3. Extent of Act.
4. Commencement of Act.
5. Definitions.

Preparation of Lists.

6. Alteration of dates.
7. Notice as to borough rates.
8. Arrangement of lists, &c.
9. Preparation of burgess lists with parliamentary lists.
10. Application of Parliamentary Registration Acts to burgess lists.
11. Publication of overseers lists.
12. Lists of persons qualified to be aldermen or councillors, but not to be burgesses.

Claims and Objections.

13. Claims by lodgers retaining same lodgings in successive years.
14. Grounds of objection to be specified in notice.

Revision of Lists.

15. Duties and powers of revising barrister.
16. Proceedings on objection to voters.
17. Declaration of lodgers to be primâ facie proof of title.
18. Declaration by persons changing place of abode, &c.
19. Costs of objections.
20. Appeal against decision of revising barrister.
21. Power to make rules for proceedings at revision courts.

Miscellaneous.

Clause.
22. Registration of lodgers.
23. Registrars to furnish notices of deaths to overseers.
24. List of persons disqualified by parochial relief.
25. Correction of burgess roll.
26. Provision where register wanting or defective.
27. Inaccuracies in register and burgess roll.
28. Election of assessors.
29. Expenses and receipts.
30. Forms in schedule, &c.
31. Saving for existing registers and burgess rolls.
32. Repeal of 6 Vict. c. 18. s. 40. as to boroughs.

Schedule.

A

B I L L

[AS AMENDED IN COMMITTEE]

TO

Amend the Law with respect to the Registration of Borough Voters in England and Wales. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title.

1. This Act may be cited as the Registration of Borough Voters Act, 1877.

Application of Act.

2. This Act shall not apply to the election of members to serve in Parliament for counties, or for the universities of Oxford, Cambridge, or London.

Extent of Act.

3. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

4. This Act shall come into operation on the first day of May one thousand eight hundred and seventy-eight, which date is in this Act referred to as the commencement of this Act.

Definitions.

5. In this Act, unless the context otherwise requires—

The term "Reform Act, 1832," means the Act of the second year of the reign of King William the Fourth, chapter forty-five, intituled "An Act to amend the representation of the people "in England and Wales :"

The term "Municipal Corporation Acts" means the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to "provide for the regulation of municipal corporations in "England and Wales," and the Acts amending the same :

The term "Parliamentary Electors Registration Act, 1843," means the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen, intituled "An Act to amend the law for the registration of persons

A.D. 1877.

" entitled to vote, and to define certain rights of voting, and to
" regulate certain proceedings in the election of members to
" serve in Parliament for England and Wales:"

The term "Parliamentary Electors Registration Acts" means the Parliamentary Electors Registration Act, 1843, and any enactment amending the same, or otherwise relating to the registration of parliamentary electors:

The term "parliamentary borough" means a city or borough as defined by the Parliamentary Electors Registration Act, 1843:

The term "municipal borough" means any place for the time being subject to the Municipal Corporation Acts:

The term "borough" includes parliamentary and municipal borough:

The term "parliamentary elector," used in relation to any borough, means a person entitled to vote at the election of any member or members to serve in Parliament for that borough:

The term "burgess" has the same meaning as in the Municipal Corporation Acts:

The term "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

Other terms used in this Act have the same meaning as in the Parliamentary Electors Registration Acts.

Preparation of Lists.

Alteration of dates.

6. The following alterations of dates shall be made:

(1.) The precept to be sent to overseers under the Parliamentary Electors Registration Acts, including this Act, shall be sent on or before the tenth day of May instead of on or before the tenth day of June:

(2.) The notice to be given by overseers under those Acts for payment of rates and taxes shall be given on or before the twentieth day of May instead of on or before the twentieth day of June:

(3.) The payment of such rates and taxes shall be made on or before the twentieth day of June instead of on or before the twentieth day of July:

(4.) The lists of persons who have not paid such rates shall be made out on or before the twenty-second day of June, and kept for perusal during fourteen days after the twenty-second day of June, instead of on or before or after the twenty-second day of July:

(5.) The period of qualification for parliamentary electors and burgesses shall end on the twenty-fourth day of June in each year instead of on the last day of July.

Notice as to borough rates.

7. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the overseers of every parish situate wholly or partly in the municipal borough shall, on or before the twentieth day of May in every year, publish a notice in writing stating that no person will be entitled to have his name inserted in any burgess list for the borough then next to be made in respect of property within that parish, unless he pay on or before the twentieth day of June then next ensuing all the poor rates (including borough rates, if any,) which have become payable from him in respect of those premises during the twelve calendar months next before the fifth day of January then last past.

Arrangement of lists, &c.

8. The lists of parliamentary voters and registers of parliamentary electors in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate.

Preparation of burgess lists with parliamentary lists.

9. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the overseers of every parish situate wholly or partly either in the parliamentary or in the municipal borough shall, on or before the last day of July in every year, make out or cause to be made out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by the Representation of the People Act, 1867 (otherwise than as lodgers), to be registered as voters for the parliamentary borough in respect of the occupation of property situate wholly or partly within that parish, or entitled to be enrolled as burgesses for the municipal borough in respect of the occupation of any property so situate; and with respect to every list so made out, the following provisions shall have effect:

(1.) The lists shall be in substitution for the lists of persons so entitled which are required to be made out under the Parliamentary Electors Registration Acts and the Municipal Corporation Acts.

A.D. 1877.

(2.) Where the parish is situate wholly or partly both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions:

Division one shall comprise the names of the persons entitled both to be registered as parliamentary voters and to be enrolled as burgesses.

Division two shall comprise the names of the persons entitled to be registered as parliamentary voters but not to be enrolled as burgesses.

Division three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters.

(3.) In each list the surname and other name of every person whose name is inserted therein shall be written at full length, together with the place of his abode, and the nature of his qualification, and the name of the street, lane, or place, and the number of the house, if any, or other description of the place where the property in respect of which he is entitled is situate.

(4.) Each list, or if the list is made out in divisions, each division shall be signed and otherwise dealt with in manner directed by the Parliamentary Electors Registration Acts with respect to the alphabetical lists mentioned in section thirteen of the Parliamentary Electors Registration Act, 1843.

(5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough.

(6.) Where no part of the parish is situate within the parliamentary borough, the list for the parish shall be deemed to be a burgess list for the municipal borough.

(7.) Where the list is made out in divisions, divisions one and two shall be deemed to be lists of voters for the parliamentary borough, and divisions one and three shall be deemed to be burgess lists for the municipal borough.

(8.) The lists and each division thereof may, according to convenience for use, be framed in parts for polling districts or wards, and where the polling districts and wards are not conterminous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists.

Application of Parliamentary

10. The provisions of the Municipal Corporation Acts shall not apply to any burgess list made out under this Act, and instead

thereof the provisions of the Parliamentary Electors Registration Acts (including this Act) shall apply to every such burgess list as if it were a list of voters made out under those Acts, and as if the term "borough" as used in those Acts included municipal borough: Provided as follows:

Registration Acts to burgess lists.

(1.) Nothing in this Act shall authorise a person entered on a burgess list, not being also a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or any person entered on a list of parliamentary voters, not being also a burgess list, to make any objection in respect of a burgess list;

(2.) The last day for revising a burgess list made out under this Act shall be the fifteenth day of October; and

(3.) The burgess lists when revised shall be dealt with in manner directed by the Municipal Corporation Acts.

Publication of overseers lists.

11. Any list which is by the Parliamentary Electors Registration Acts or this Act directed to be published by overseers, shall be published by them, not only in the manner prescribed by those Acts, but also by being affixed and kept in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and every public municipal or parochial office within the parish to which the list relates.

All the provisions of those Acts with respect to the publication of lists shall apply to the publication to be made under this section.

Lists of persons qualified to be aldermen or councillors, but not to be burgesses. See 32 & 33 Vict. c. 55. s. 3.

12. Where a municipal borough is wholly or partly coincident with a parliamentary borough, the separate lists required to be made of the persons entitled to be elected councillors or aldermen of the municipal borough, but not entitled to be on the burgess roll of that borough, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with respect to the burgess lists shall apply to those separate lists.

Claims and Objections.

Claims by lodgers retaining same lodgings in successive years. See 6 Vict. c. 18. s. 4.

13. Where a person is entered in respect of lodgings on the register of voters for the time being in force, and desires to be entered in the next register in respect of the same lodgings, he may claim to be so entered by sending notice of his claim to the overseers of the parish in which his lodgings are situate on or before the twentieth day of July.

A.D. 1877.

The overseers shall, on or before the last day of July, make out a list of all persons so claiming, and if they have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered, or is dead, shall add in the margin of the list opposite his name the words "objected to" or "dead," as the case may be.

The lists so made out shall be signed, published, and otherwise dealt with in the same manner as the alphabetical lists mentioned in section thirteen of the Parliamentary Electors Registration Act, 1843, and shall for the purposes of the Parliamentary Electors Registration Acts be deemed to be lists of voters and not lists of claimants, and the persons against whose names the overseers have so written the words "objected to" or "dead" shall be deemed to be duly objected to.

Grounds of objection to be specified in notice. See 28 & 29 Vict. c. 36. s. 6.

14. A notice of objection to a person on a list of voters for a parliamentary borough, or a burgess list for a municipal borough, shall not be valid unless it specifies the grounds of objection.

Revision of Lists.

Duties and powers of revising barrister.

15. A revising barrister shall, with respect to the lists of voters which he is appointed to revise, perform the duties and have the powers following:

(1.) He shall insert in the proper list of voters the name of every person who has duly claimed to have his name inserted therein, and proves that he is entitled to have it so inserted.

(2.) He shall erase from the lists of voters the name of every person who, whether objected to or not, is proved to be dead or to be not entitled to have his name inserted therein, or who, if objected to, does not prove that he is entitled to have his name inserted therein.

(3.) He shall, where the name of any person is entered more than once on the lists of voters for the same parliamentary or municipal borough, on being satisfied that the entries relate to the same person, retain one of the entries and erase the other or others. Any such person may, by notice in writing delivered to the revising barrister at the opening of his first revision court, select the entry to be retained; but if he does not, the entry to be retained shall be selected by the revising barrister.

(4.) He shall, where the qualification in respect of which a person's name is entered in any list either of voters or of

claimants is insufficient or inaccurate, but it is proved that the person is in fact entitled to have his name inserted in the lists of voters, either amend the list of voters in which the name is entered by substituting the correct qualification, or, as the case may be, insert the name with the qualification as proved in the proper list of voters.

(5.) He may amend any clerical or accidental mistake or omission in any list, claim, notice, or objection.

(6.) He may, by summons under his hand, require any person to attend at the court, and give evidence or produce documents for the purpose of the revision, and any person who, after the tender to him of a reasonable amount for his expenses, fails so to attend, or who fails to answer any question put to him by the revising barrister in pursuance of this section, or to produce any document which he is required in pursuance of this section to produce, shall be liable to pay such fine, not exceeding five pounds, as may be imposed by the barrister; and such fine may be recovered, and when recovered shall be applied in like manner as any other fine imposed by the revising barrister under the Parliamentary Electors Registration Acts.

Proceedings on objection to voters.

16. Where any person whose name is on any list of voters for a borough is duly objected to by some person other than the overseers, the revising barrister, whether the person objected to does or does not appear before him, shall, before requiring it to be proved that the person so objected to is entitled to have his name inserted in the lists of voters for the borough, or expunging his name, require primâ facie proof to be given to his satisfaction of the ground of objection against him, and for that purpose may himself examine and allow the objector to examine the overseers upon oath touching the truth of the alleged ground of objection.

If such primâ facie proof is not given to his satisfaction he shall retain the name of the person objected to in the lists of voters.

If such primâ facie proof is given to his satisfaction, and the person objected to does not appear before him, he shall not retain that person's name in the lists of voters.

Declaration of lodgers to be primâ facie proof of title.

17. In the case of a person claiming to vote as a lodger the statutory declaration annexed to his notice of claim shall, if duly made, be deemed for the purposes of revision to be primâ facie evidence of his qualification.

Declaration by persons changing

18. Any person whose name appears in any list of voters for a borough, and whose place of abode is not correctly stated in that

A.D. 1877.

place of abode, &c.

list, or who has received a notice of objection grounded on his place of abode and is otherwise qualified to have his name inserted on the list in respect of the qualification therein mentioned, may, if he think fit, make and subscribe a declaration as to his place of abode before any justice of the peace or any commissioner or other person authorised to administer oaths in the Supreme Court of Judicature.

All such declarations shall be duly dated, and shall on or before the day next but two before the first day for the holding of a court of revision be transmitted to the overseers of the parish in which the qualification to which the declaration relates is situate.

The overseers shall endorse on every such declaration the name of that parish, and the name of the person making the declaration, and also the date on which they received the same, and shall affix their initials to the endorsement, and shall deliver all such declarations to the revising barrister at his first court, arranged according to the alphabetical order of the parishes in the borough.

Every revising barrister shall, for the purpose of correcting the statement in the list of the place of abode of any such person, receive any such declaration, if transmitted to the overseers in due time (of which transmission the endorsement in that behalf by the overseers shall be primâ facie proof), as evidence of the place of abode of the declarant, and that without proof of the signature of the declarant, or of the justice, commissioner, or person before whom the declaration purports to have been subscribed, unless he has good reason to doubt the genuineness of any signature thereto.

All such declarations may be perused by any person at the office of the overseers, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, before the first day for the holding of any court of revision, and the overseers shall deliver copies of any such declaration to all persons applying for the same on payment of the price of fourpence per folio of seventy-two words.

Any person falsely or fraudulently signing any such declaration in the name of any other person, whether that person is living or dead, or in a fictitious name, and every person transmitting as genuine any false or falsified declaration, knowing the same to be false or falsified, and any person knowingly and wilfully making any false statement of fact in such declaration, shall be guilty of a misdemeanor, and punishable by fine or by imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound any such declaration.

A.D. 1877.

Costs of objections.

19. Where any objection is made to any person appearing on any list of voters for any borough, and the name of the person so objected to is retained on or inserted in the list by the revising barrister, the revising barrister shall, unless for special reasons he otherwise determine, order costs, not less than five shillings, to be paid to the person objected to.

Appeal against decision of revising barrister.

20. If any person feels aggrieved by a revising barrister neglecting or refusing to state any case, he may apply to the High Court of Justice, upon affidavit of the facts, for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated, and thereupon the High Court, or any judge thereof in chambers, may, if it seem just, make such rule, and make the same absolute or discharge it with or without payment of costs, as may seem just, and the revising barrister on being served with any such rule absolute shall state the case accordingly, and the case shall be stated, and the appeal entertained and heard, notwithstanding any limitations of time or place contained in the Parliamentary Electors Registration Act, 1843.

Power to make rules for proceedings at revision courts.

21. One of Her Majesty's Principal Secretaries of State may from time to time make, and when made revoke and alter, rules for regulating the practice and course of procedure in the courts of revising barristers for the purposes of the Parliamentary Electors Registration Acts and of this Act.

All rules made under this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, and if not, within forty days after the then next meeting of Parliament, and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days, praying that any such rule be annulled, Her Majesty may by order in council annul the same, and any rule so annulled shall thenceforth be of no effect, but without prejudice to the validity of any proceedings in the meantime taken thereunder.

All such rules shall, while in force, have effect as if enacted in this Act.

Miscellaneous.

Registration of lodgers.

22. With respect to the registration of lodgers, the following provisions shall have effect:

(1.) Lodgings occupied by a person in any year or two successive years shall not be deemed to be different lodgings by reason only that in that year, or in either of those years,

A.D. 1877.

he has, in addition to those lodgings, also occupied some other room or place.

(2.) For the purpose of qualifying a lodger to vote, the occupation in immediate succession of different lodgings in the same house shall have the same effect as continued occupation of the same lodgings.

(3.) Where lodgings are jointly occupied by more than one lodger, and the clear yearly value of the lodgings, if let unfurnished, is of an amount which when divided by the number of the lodgers gives a sum of not less than ten pounds for each lodger, then each lodger, if otherwise qualified, shall be entitled to be registered, and when registered to vote as a lodger.

Registrars to furnish notices of deaths to overseers.

23. Every registrar of births and deaths whose sub-district includes the whole or part of any parliamentary or municipal borough shall furnish from time to time to the overseers of every parish the whole or any part of which is included in any such borough, and also in his sub-district, returns of the names and residences of all male persons of full age dying within that parish or part, and, on the application of those overseers, returns of the names and residences of all women of full age dying within that parish or part.

The returns shall state the names of all such persons in full (where the names are known), and the dates of their deaths, and the names and residences of the persons by whom information of the deaths was given to the registrar.

The returns shall be furnished within seven days after the last day of each of the months of March, June, September, and December in every year, and shall respectively include the deaths during the three months next preceding those respective days.

It shall be the duty of the overseers to omit from any list made by them the name of any person who appears from such returns to be dead, and to allow any person who is registered as a parliamentary elector or enrolled as a burgess of the borough to which the returns relate, to inspect any such returns in their custody at all reasonable times.

Payment shall be made by the overseers to the registrar for the returns to be made by him at the rate of five shillings for every hundred names.

List of persons disqualified by parochial relief.

24. The overseers of every parish shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified for being inserted in the lists of parliamentary voters

or burgess lists for that parish by reason of having received parochial relief; and the relieving officer, upon application from the overseers, within twenty-one days before the last day for the publication by the overseers of the lists of parliamentary voters and burgess lists, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons.

Correction of burgess roll.

25. Where a burgess roll is made up from burgess lists made out under this Act, the provisions of the Parliamentary Electors Registration Acts as to the alteration or correction of the register in pursuance of any judgment or order of the court of appeal shall apply to the alteration or correction of the burgess roll as if it were a register of parliamentary electors, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him.

Provision where register wanting or defective. See 7 Will. 4. and 1 Vict. c. 78. s. 5.

26. Every register of parliamentary electors shall, so far as it relates to any parish, continue to be in force with respect to that parish until another register of electors has come into force with respect to the same parish.

A register of parliamentary electors shall not be invalidated by any want of title in the barrister by whom the lists from which it was formed were revised.

Inaccuracies in register and burgess roll.

27. It shall be the duty of every town clerk or other officer having the custody of a register of parliamentary electors or burgess roll to call the attention of the overseers of every parish to which the register or roll relates to any mistake or omission therein.

Election of assessors.

28. After the commencement of this Act assessors shall not be elected in any municipal borough which is wholly or partly coincident with a parliamentary borough, and any assessors elected in any such borough before the commencement of this Act shall cease to hold office upon the commencement of this Act.

Expenses and receipts.

29. Where a municipal borough is wholly or partly coincident with a parliamentary borough, one half of the expenses properly incurred by the town clerk and overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists shall be defrayed in the manner provided by the Parliamentary Electors Registration Acts, as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund; and one half of the moneys received by any

A.D. 1877.

town clerk by way of fines imposed in respect of any of those lists shall be applied in the manner directed by those Acts, and the other half paid into the borough fund.

Forms in schedule, &c.

30. The schedule to this Act and the notes thereto shall be construed and have effect as if enacted in the body of this Act, and the several forms in that schedule shall be used in substitution, and, for the purposes of the Parliamentary Electors Registration Acts, be deemed to be substituted, for the corresponding forms in the schedules to those Acts.

All precepts, instructions, proceedings, and notices relating to the registration of parliamentary electors or of burgesses shall be expressed in such manner and form as may be necessary to carry the provisions of this Act into effect.

Saving for existing registers and burgess rolls.

31. Nothing in this Act shall affect any register of electors or burgess roll in force at the commencement of this Act.

Repeal of 6 Vict. c. 18. s. 40. as to boroughs.

32. Section forty of the Parliamentary Electors Registration Act, 1843, is hereby repealed so far as it relates to elections for parliamentary boroughs.

SCHEDULE.

A.D. 1877.

Form A.

Form of Precept of the Town Clerk to the Overseers of any Parish wholly or partly situate in a Parliamentary Borough, or in a Municipal Borough wholly or partly coincident with a Parliamentary Borough.

Omit parts between crosses where no part of parish is in a parliamentary borough.

Omit parts between asterisks if no part of the parish is in a municipal borough.

†Parliamentary borough of † / *Municipal borough of * } To the overseers of the poor of the parish of [*or* township of]

to wit.

In pursuance of the provisions of the Parliamentary Electors Registration Act, 1843, and the Registration of Borough Voters Act, 1877, I require your attention to the following

Instructions.

Note.—Form B. in this schedule must be sent.

On or before the twentieth day of May you are to publish a notice [*or* notices], signed by you according to the form marked B. among the printed forms herewith sent.

The manner in which you are required to publish that notice is as follows; (that is to say,) you are to fix one of the printed copies (each copy being first signed by you), on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [*or* township], including chapels which do not belong to the Established Church, and also in some public and conspicuous position on or near every post office or telegraph office occupied by or on behalf of Her Majesty's Postmaster General, and every public municipal or parochial office in your parish [*or* township], or if there be no such church, chapel, or office, then in some public situation in your parish [*or* township], and it must remain there during a period including two Sundays at the least.

Omit parts between crosses where no part of the parish is in a parliamentary borough.

Note.—A copy of the notice in Schedule E. to the Representation of the People Act, 1867, substituting the words "twentieth day of June" for the words "twentieth day of July must be sent.

†Where any poor rate which it was your duty to collect was on the first day of May due from an occupier in respect of any premises capable of conferring the franchise for the said parliamentary borough, and remains unpaid on the twentieth day of May, you are to give to that occupier a notice in the form marked E. sent herewith, by delivering it to the occupier, or leaving it at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable. You need not serve this notice if the rate has been previously duly demanded by a demand note served in the like manner as the last-mentioned notice.†

On or before the twenty-second day of June next you are to make out a list containing the name and place of abode of every person who has not paid on or before the twentieth day of the same month all poor rates which have become payable from him in respect of any premises within your parish [*or* township] before the fifth day of January a last, and you are to keep that list to be perused by any person gratis at any time between 10 a.m. and 4 p.m. on any day, except Sunday, during the first fourteen days after the said twenty-second day of June.

A.D. 1877.

Omit part between crosses if no part of the parish is in a parliamentary borough.

Omit part between asterisks if no part of the parish is in a municipal borough.

Omit part between asterisks if no part of the parish is situate in a municipal borough, or if no part of the parish is in a parliamentary borough.

On or before the last day of July you are to make out a list of all persons who are †entitled under any right conferred by the Reform Act, 1832 (2 & 3 Will. 4. c. 45.), or the Representation of the People Act, 1867, (otherwise than as lodgers) to vote at an election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within your parish [*or* township] *or† entitled to be burgesses for the municipal borough of , in respect of the occupation of property situate wholly or partly within your parish [*or* township].*

* This list is to be made out in three divisions.

Division one is to comprise the names of the persons who are entitled to vote for a member [*or* members] to serve in Parliament, and also to vote as burgesses.

Division two is to comprise the names of the persons who are entitled to vote for a member [*or* members] to serve in Parliament, but not to vote as burgesses.

Division three is to comprise the names of the persons who are entitled to vote as burgesses, but not to vote for a member [*or* members] to serve in Parliament.*

Omit part between crosses if no part of the parish is in a parliamentary borough.

† On or before the last day of July you are also to make out a list of all persons who are entitled within your parish [*or* township] to vote at an election of a member [*or* members] to serve in Parliament for the said parliamentary borough in respect of any other right (except as freemen or as lodgers).

On or before the last day of July you are also to make out a list of all persons who being on the register of electors now in force for the said parliamentary borough in respect of residence within your parish [*or* township] in lodgings have duly claimed, on or before the twentieth day of July, to have their names inserted in the lists of voters for the said borough in respect of residence in the same lodgings.†

Note.–The appropriate form must be sent.

These lists are [*or* This list is] to be in the Form C. (*or, as the case may be,* D. *or* E.) sent herewith.

Omit part between asterisks if no part of the parish is in a municipal borough, but unless it is omitted, send Form F.

* On or before the last day of July you are also to make out a list (in the Form F. sent herewith) of all persons who are entitled, in respect of the occupation of property within your parish [*or* township], to be elected councillors or aldermen of the said municipal borough, but by reason of residence beyond seven miles of that borough are not entitled to be on the burgess roll thereof.*

Each of these lists is, so far as it relates to persons who are qualified in respect of property (including lodgings), to be arranged in the same order in which the qualifying premises appear in the rate book of your parish [*or* township], or as nearly thereto as will enable the list to record the qualifying premises in successive order in the street or other place in which they are situate.

Note.–A printed copy of the directions in the schedule must be enclosed.

In making out each of these lists you will follow the directions of which a copy is enclosed.

The period of qualification for all voters ends on the twenty-fourth day of June.

A.D. 1877.

On or before the first day of August you are to publish written or printed copies of these lists signed by you in the same manner as before mentioned with respect to the notice.

You are to keep a copy of these lists signed by you, and also a copy of the list of defaulters in payment of assessed taxes sent to you by the collector of taxes, to be perused by any person without payment of any fee at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the first fourteen days after the said lists of voters have been published, and to deliver a copy of any such list of voters to any person who requires the same on the payment of a price for each copy after the rate contained in the table marked Schedule D., No. 1, herewith sent.

Note.—A printed copy of the Table No. 1 in Schedule D. to 6 Vict. c. 18. must be enclosed.

You are to make out lists according to the forms marked I. sent herewith, containing the names of every person who has given or caused to be given to you, or any one of you, on or before the twenty-fifth day of August his claim to have his name inserted in any list of voters, making separate lists of—

Note.—Forms marked I. and K. must be sent.

(1.) Persons claiming to be entered in the lists of parliamentary electors otherwise than as freemen or lodgers; and

(2.) Persons claiming to be entered in the lists of parliamentary electors as lodgers who are not comprised in the above-mentioned list of lodgers; * and

(3.) Persons claiming to be entered in the lists of burgesses.*

Omit part between asterisks if no part of the parish is in a municipal borough.

You are also to make out lists according to the forms marked K., containing the names of every person against whom a notice of objection has been given to you, or any of you, on or before the twenty-fifth day of August as not being entitled to have his name retained in any list for your parish [*or* township], giving in separate lists the objections made to—

(1.) Any person on the list of parliamentary electors:

(2.) Any person on the list of lodgers published on the last day of July:

(3.) Any person on the list of burgesses.

Omit part between asterisks if no part of the parish is in a municipal borough.

On or before the first day of September you are to sign and publish each of those lists in the same manner as before mentioned with regard to the notice.

You are to keep a copy of each of the lists of claimants and persons objected to, signed by you, and you are to allow those copies, and also the original notices of objection, to be perused by any person without payment of any fee at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September, and you are to deliver a copy of each of those lists to any person requiring the same, on the payment of a price for each copy after the rate contained in the table marked Schedule (D.), No. 1, herewith sent.

If you find any such notice, list, or other document published by you as aforesaid to be destroyed, mutilated, effaced, or removed, you are forthwith to place another in its room to the same effect.

On or before the twenty-ninth day of August you are to deliver to me copies of—

(*a*) The lists of voters;

(*b*) The lists of persons claiming as lodgers;

A.D. 1877.

(*c*) The lists of other claimants; and

(*d*) The lists of persons objected to,

so respectively made out and signed by you as aforesaid.

You are to attend at the court to be holden for the revision of the lists of voters for this borough, of the time of holding which notice will be given; and at the opening of the court you are there to deliver to the barrister before whom the same shall be holden, the several lists made out and signed by you, and the original notices of claims and of objections given to you.

Herein if you fail you will be liable to the penalties in that case provided.

Given under my hand this day of 18 .

(Signed) *A.B.*,
Town clerk.

FORM B.

NOTICE to be given by the OVERSEERS in a PARLIAMENTARY BOROUGH.

Parliamentary borough of ,
in the county of ,
to wit.

We hereby give notice that no person will be entitled to have his name inserted in any list of parliamentary electors for this borough now about to be made.

(*a*) In respect of the occupation of any house, warehouse, counting-house, shop, or other building, or land occupied therewith, of whatever value, whether situate wholly or in part within this parish [*or* township], unless he pays on or before the twentieth day of June all the poor rates which have become due from him in respect of those premises during the twelve calendar months next before the fifth day of January last past; or

(*b*) In respect of the occupation of any house, or, in the case of a joint occupation, house (joint), warehouse, counting-house, shop, or other building, or land occupied therewith, of the clear yearly value of not less than ten pounds, unless he pays on or before the twentieth day of June all assessed taxes payable from him in respect of those premises before the fifth day of January;

and all persons who omit to make such payments will be incapable of being upon the next register of parliamentary electors for this borough in respect of those premises.

Dated this day of , in the year one thousand eight hundred .

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with the parliamentary borough.

NOTICE to be given by the OVERSEERS in a MUNICIPAL BOROUGH.

Municipal borough of ,
in the county of ,
to wit.

We hereby give notice that no person will be entitled to have his name inserted in any list of burgesses for this borough now about to be made

in respect of the occupation of any house, warehouse, counting-house, shop, or other building, whether situate wholly or in part within this parish [*or* township], unless he pays, on or before the twentieth day of June all poor rates, including borough rates (if any), which may have become payable by him in respect of the said premises, up to the preceding fifth day of January, and all persons who omit to make such payment will be incapable of being upon the next burgess roll for this borough in respect of those premises. A.D. 1877.

Dated this day of , in the year one thousand eight hundred .

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.—Where a parish is situate within both a parliamentary borough and a municipal borough, both the above notices must be issued.

FORM C.

FORM of LISTS of VOTERS for a PARISH wholly or partly situate both in a PARLIAMENTARY BOROUGH and in a MUNICIPAL BOROUGH.

No. 1. LIST OF

† The persons entitled (otherwise than as lodgers), to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough of , in respect of the occupation of property wholly or partly within this parish [*or* township], *

and† the persons entitled to be enrolled as burgesses for the municipal borough of , in respect of the occupation of property wholly or partly within this parish [*or* township].*

Division One. Parliamentary Electors and Burgesses.

Brick Street.

1. Names of Voters in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.
Masters, Abel	1, Brick Street	House	1, Brick Street.
Smith, William	Wood Villa, Gainsborough.	Building	2, Brick Street.
Brown, Thomas	4, Brick Street	Shop	4, Brick Street.
Abrahams, Samuel	4, Brick Street	House (joint)	4, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

A.D. 1877.

Division Two. Parliamentary Electors only.

Brick Street.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Stubbs, Thomas -	10, High Street -	- - -	4, Brick Street.
Adams, John -	24, Duke Street -	- - -	7, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

Division Three. Burgesses only.

Brick Street.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Thompson, Henry -	14, John Street -	Warehouse -	3, Brick Street.
Gardener, Mary -	10, Brick Street -	House - -	10, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2. LIST OF

The persons entitled to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of any other right (except as freemen or as lodgers).

Brick Street.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property (if any).
Smith, John -	15, Cannon Street	Inhabitant householder, paying scot and lot.	30, Brick Street.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 3. LIST OF

The persons who being on the register of electors now in force for the parliamentary borough of , in respect of residence within the

parish [*or* township] of in lodgings, claim, in respect of residence in the same lodgings, to have their names inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the said borough.

Brick Street.

Names of Claimants in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number, if any, of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.	Objections by Overseers.

(Signed) *A.B.*, *C.D.*, } Overseers.

FORM D.

FORM of LIST of Voters for a PARISH wholly or partly situate in a PARLIAMENTARY BOROUGH, but NOT in a MUNICIPAL BOROUGH.

This form is to be the same as Form C., omitting from list No. 1 the parts between asterisks, the words "*Division One. Parliamentary Electors and Burgesses*" in division one, and divisions two and three.

FORM E.

FORM of LIST of Voters for a PARISH wholly or partly situate in a MUNICIPAL BOROUGH, but not in a PARLIAMENTARY BOROUGH.

Note.–This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

This form is to be the same as Form C., No. 1, omitting the parts between crosses, the words "*Division One. Parliamentary Electors and Burgesses,*" and divisions two and three.

FORM F.

FORM of LIST of Occupiers in any Parish entitled under 32 & 33 Vict. c. 55. s. 3 to be elected as Councillors or Aldermen of a Municipal Borough, although not entitled to be on the Burgess Roll of that borough.

Note.–This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

List of persons who are entitled to be elected councillors or aldermen of the municipal borough of in respect of the occupation within the parish [*or* township] of of any property, but who, by reason of their residence beyond seven miles of the borough, are not entitled to be on the burgess roll of that borough.

A.D. 1877.

1. Names of Persons in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

FORM G.

FORM OF NOTICE OF CLAIM.

No. 1.—PARLIAMENTARY (General).

To the overseers of the parish [*or* township] of

I claim to have my name inserted in the list made by you of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of the city] of , in respect of the qualification named below.

Dated the day of one thousand eight hundred and .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*

No. 2.—PARLIAMENTARY (Lodgers).

I claim to have my name inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of the city] of , in respect of the qualification named below.

Name of Claimant in full, Surname being first.	Description of Rooms occupied, and whether furnished or not.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.
Stevens, John William.	Two rooms, first floor, furnished.	51, Brick Street	16*s.* a week -	William Johnson, High Street.

I hereby declare that I have during the twelve calendar months immediately preceding the twenty-fourth day of June in this year occupied as sole tenant

A.D. 1877.

[*or* as joint tenant with ,] and resided in the above-mentioned lodgings, and that those lodgings are of a clear yearly value, if let unfurnished, of ten [*or* twenty] pounds or upwards.

Dated the day of .

(Signed) *A.B.*, (the Claimant.)

I, the undersigned, certify that I have witnessed the above signature of the above-named [*here state name of claimant*], at the date stated above, and that I believe the above claim to be correct.

(Signed) *C.D.*, of .

[*State residence and calling of witness.*]

Note.—If the claim is in respect of different rooms successively occupied as lodgings in the same house, the notice of claim must specify each room, or set of rooms, so occupied. If the claimant is on the register in respect of the same lodgings, and desires to have his name inserted in the list of lodger voters published on the first of August, he must send in this claim on or before the twentieth of July. In any other case he must send it in after the last day of July and on or before the twenty-fifth of August. If there are two joint lodgers the yearly value of the lodgings must be twenty pounds, if three, thirty pounds, and so on.

No 3.—Municipal.

To the overseers of the parish [*or* township] of .

I claim to have my name inserted in the list made by you of burgesses of the municipal borough [*or* city] of , in respect of the qualification named below.

Dated the day of one thousand eight hundred and .

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and situation of Qualifying Property.

(Signed) *A.B.*

Form H.

Form of Notice of Objection.

No. 1 (Parliamentary).

Notice of Objection to be given to Overseers.

To the overseers of the parish [*or* township] of

A.D. 1877.

I hereby give you notice that I object to the name of being retained on the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the city [*or* borough] of , on the following grounds, viz. :—

1. *e. g.*, that he has not occupied for twelve months to June 24.
2. That
3.

Dated this day of .

(Signed) *A.B.*, of [*place of abode*] on the list of parliamentary voters for the parish of .

Note.—If there is more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

No. 2 (PARLIAMENTARY).

NOTICE of OBJECTION to be given to PERSON OBJECTED TO.

To Mr.

I hereby give you notice that I object to your name being retained on the lists of voters entitled to vote in the election of members [*or* a member] to serve in Parliament for the city [*or* borough] of , on the following grounds viz. :—

1. *e. g.*, that you have not occupied for twelve months to June 24.
2. That
3

Dated this day of .

(Signed) *A.B.*, of [*place of abode*] on the list of parliamentary voters for the parish of .

No. 3 (MUNICIPAL).

NOTICE of OBJECTION to be given to OVERSEERS.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

To the overseers of the parish [*or* township] of .

I hereby give you notice that I object to the name of being retained on the lists of burgesses of the borough [*or* city] of , on the following grounds, viz. :—

1. *e. g.*, that he has not occupied for twelve months to June 24.
2. That
3.

Dated this day of .

(Signed) *A.B.*, of [*place of abode*] on the list of burgesses for the parish of .

Note.—If the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

A.D. 1877.

No. 4 (MUNICIPAL).

NOTICE of OBJECTION to be given to PERSON OBJECTED TO.

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

To Mr. .

I hereby give you notice that I object to your name being retained on the lists of burgesses of the borough [*or* city] of , on the following grounds, viz. :—

1. *e. g.*, that you have not occupied for twelve months to June 24.
2. That
3.

Dated this day of .

(Signed) *A.B.* of [*place of abode*] on the list of burgesses for the parish of .

FORM I.

FORM of LIST of CLAIMANTS to be PUBLISHED by the OVERSEERS.

No. 1.—GENERAL LIST OF CLAIMANTS (PARLIAMENTARY).

The following persons claim otherwise than as lodgers, to have their names inserted in the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of city] of .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2.—LIST OF LODGER CLAIMANTS (PARLIAMENTARY).

The following persons claim as lodgers to have their names inserted in the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough [*or* county of city] of .

Name of Claimant in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings are situate.	Amount of rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.

(Signed) *A.B.*, *C.D.*, } Overseers.

A.D. 1877.

No. 3.—List of Claimants (Municipal).

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

The following persons claim to have their names inserted in the burgess roll for the municipal borough [*or* city] of

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

Form K.

Form of List of Persons objected to to be published by the Overseers.

No. 1.—List of Persons objected to (Parliamentary).

The following persons have been objected to as not being entitled to have their names retained on the lists of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the parliamentary borough of .

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Nature and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

No. 2.—List of Lodgers objected to (Parliamentary).

The following persons have been objected to as not being entitled to have their names retained in the list of persons entitled to vote in respect of residence in lodgings in the election of a member [*or* members] to serve in Parliament for the parliamentary borough of .

Name of Person objected to in full, Surname being first.	Description of Rooms occupied.	Street, Lane, or other Place, and Number (if any) of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.

(Signed) *A.B.*, *C.D.*, } Overseers.

Note.—This form applies only to the list of lodger claimants who claimed on or before the twentieth day of July, and were then on the register in respect of the same lodgings. The list of those lodgers who are objected to must be a separate list from that of other persons objected to.

No. 3.—LIST OF PERSONS OBJECTED TO (MUNICIPAL).

The following persons have been objected to as not being entitled to have their names entered on the burgess list for the municipal borough [*or* city] of .

Note.—This form is to be used only where the municipal borough is wholly or partly coincident with a parliamentary borough.

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Name and Situation of Qualifying Property.

(Signed) *A.B.*, *C.D.*, } Overseers.

NOTE.

DIRECTIONS FOR THE GUIDANCE OF OVERSEERS in making out the lists.

(1.) The surname and other names of each person are to be written at full length, the surname being placed first.

(2.) Each of the lists should, so far as it relates to persons qualified in respect of property (including lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for your parish [*or* township], or as nearly thereto as will enable the lists to record the qualifying premises in successive order in the street or other place in which they are situate.

(3.) The place of abode should be entered in such a manner as will afford a sufficient address for a person entered if a letter is addressed to him by post.

A.D. 1877.

(4.) The qualification should be entered as nearly as possible in the words of the statute conferring the franchise, for instance:—

(*a*) The qualification of a person under the Representation of the People Act, 1867, should be stated thus, "house:"

(*b*) The qualification of a person under the Act 2 & 3 Will. 4. c. 45. (1832), should be stated thus: house, or in the case of a joint occupation, house (joint), warehouse, counting-house, shop, or building, as the case may be.

(5.) The above directions apply to the lists of claimants and persons objected to.

(6.) In making out the list of lodgers which you are to publish on the first of August, if you have reason to believe that any person whose name is entered on that list is dead, or is not entitled to vote, you must make a note to that effect in the last column of the list.

Registration of Borough Voters.

A

B I L L

[AS AMENDED IN COMMITTEE]

To amend the Law with respect to the Registration of Borough Voters in England and Wales.

(*Prepared and brought in by Sir Charles Dilke, Mr. Rathbone, and Mr. Boord.*)

Ordered, by The House of Commons, *to be Printed,* 15 *March* 1877.

[Bill 115.] *Under* 4 *oz.*

A

B I L L

TO

Amend "The Registration of Leases (Scotland) Act, 1857." A.D. 1877.

WHEREAS an Act was passed in the session holden in the twentieth and twenty-first years of Her Majesty (chapter twenty-six) to provide for the registration of long leases in Scotland and assignations thereof; and whereas it is expedient to amend the said Act: 20 & 21 Vict. c. 26.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

"Commissary" to be read in recited Act after "sheriff."

1. Section nineteen of the said recited Act shall be read as if the word "commissary" occurred therein immediately after the word "sheriff."

Act 49 G. 3. c. 42. not to be affected.

2. Nothing in this Act shall affect the provisions of an Act passed in the forty-ninth year of His late Majesty King George the Third (chapter forty-two) for the better regulating the public records of Scotland.

Short title.

3. This Act may be cited for all purposes as "The Registration of Leases (Scotland) Amendment Act, 1877."

[Bill 246.]

Registration of Leases (Scotland) Act (1857) Amendment.

A

B I L L

To amend "The Registration of Leases (Scotland) Act, 1857."

(*Prepared and brought in by Mr. Montgomerie, Mr. Mackintosh, and Sir William Cuninghame.*)

Ordered, by The House of Commons, *to be Printed*, 11 *July* 1877.

[Bill 246.]

Under 1 *oz.*

A

B I L L

INTITULED

An Act to facilitate the removal of Wrecks obstructing Navigation. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. **1.** This Act may be cited as the Removal of Wrecks Act, 1877.

Application of Act. **2.** This Act shall not apply to ships belonging to Her Majesty.

3. In this Act,—

Interpretation of terms. The term "harbour" includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship and unship goods or passengers ;

The term "tidal water" means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour ;

The term "harbour authority" includes all persons or bodies of persons, corporate or unincorporate, being proprietors of, or intrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting a harbour ;

The term "conservancy authority" includes all persons or bodies of persons, corporate or unincorporate, intrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of a tidal water ; and

The term "general lighthouse authority" has the same meaning as it has in the Merchant Shipping Act, 1854.

Power for harbour or conservancy authority to **4.** Where any vessel is sunk, stranded, or abandoned in any harbour or tidal water under the jurisdiction of a harbour or conservancy authority, or in or near any approach thereto, in such

A.D. 1877.

remove wreck. See 10 Vict. c. 27. s. 56. 37 & 38 Vict. c. xxx. s. 11.

manner as in the opinion of the authority to be, or be likely to become, an obstruction or danger to navigation in that harbour or water, or in any approach thereto, the authority may take possession of and raise, remove, or destroy the whole or any part of the vessel, and may light or buoy any such vessel or part until the raising, removal, or destruction thereof, and may sell, in such manner as they think fit, any vessel or part so raised or removed, and also any other property recovered in the exercise of their powers under this Act, and may out of the proceeds of such sale reimburse themselves for the expenses incurred by them under this Act, and shall hold the surplus, if any, of such proceeds in trust for the persons entitled thereto.

Provided as follows:

(1.) Except in the case of property which is of a perishable nature, or which would deteriorate in value by delay, a sale shall not be made under this Act until at least seven clear days notice of the intended sale has been given by advertisement in some local newspaper circulating in or near the district over which the authority have jurisdiction; and

(2.) At any time before any property is sold under this Act, the owner thereof shall be entitled to have the same delivered to him on payment to the authority of the fair market value thereof, to be ascertained by agreement between the authority and the owner, or failing such agreement by some person to be named for the purpose by the Board of Trade, and the sum paid to the authority as the value of any property under this provision shall, for the purposes of this Act, be deemed to be the proceeds of sale of that property.

Power for general lighthouse authority to remove wreck.

5. Where any vessel is sunk, stranded, or abandoned in any fairway, or on the sea-shore, in the United Kingdom, the Channel Islands, or the Isle of Man, or any of the adjacent seas or islands, and there is not any harbour or conservancy authority having power to raise, remove, or destroy the same, the general lighthouse authority for that part of the United Kingdom in or near which the vessel is situate shall, if in their opinion the same is or is likely to become an obstruction or danger to navigation, have the same powers in relation thereto as are by this Act conferred upon a harbour or conservancy authority.

All expenses incurred by the lighthouse authority under this Act, and not re-imbursed in manner provided by this Act, shall be paid out of the Mercantile Marine Fund.

Powers of removal to extend to tackle, cargo, &c.

6. The provisions of this Act shall apply to every article or thing or collection of things being or forming part of the tackle, equipments, cargo, stores, or ballast of a vessel in the same manner as if it were included in the term "vessel," and for the purposes of this Act any proceeds of sale arising from a vessel and from the cargo thereof, or any other property recovered therefrom, shall be regarded as a common fund.

Power for Board of Trade to determine certain questionsbetween local authority and general lighthouse authority.

7. If any question arises between a harbour or conservancy authority on the one hand and a general lighthouse authority on the other hand, as to their respective powers under this Act in relation to any place being in or near an approach to a harbour or tidal water, the same shall, on the application of either authority, be referred to the decision of the Board of Trade, and that decision shall be final.

Powers of Act cumulative.

8. The powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers for the like object.

Removal of Wrecks.
[H.L.]

A

B I L L

INTITULED

An Act to facilitate the removal of Wrecks obstructing Navigation.

(*Brought from the Lords* 17 *May* 1877.)

Ordered, by The House of Commons, *to be Printed*, 4 *June* 1877.

[Bill 181.]

Under 1 *oz.*

A

B I L L

TO

Give further facilities to Landowners of limited interests in England and Wales to charge their estates with the expenses of constructing Reservoirs for the storage of Water and other similar purposes. A.D. 1877.

WHEREAS landowners of limited interests in England and Wales, with the approval of the Inclosure Commissioners, are enabled to charge their estates with sums expended by them in constructing reservoirs and other works for the supply of water, if it can be shown to the satisfaction of the Inclosure Commissioners that such works will effect a permanent yearly increase in the value of such estates for agricultural purposes, exceeding the yearly amount proposed to be charged thereon, and are also enabled to charge their estates with sums subscribed for the construction of railways and navigable canals, if it can be shown to the satisfaction of the Inclosure Commissioners that such railways and canals will effect a permanent yearly increase in the value of such estates for any purpose exceeding the yearly amount proposed to be charged thereon:

And whereas in many places it would greatly conduce to the affording of a plentiful supply of pure water to the inhabitants of villages and towns and to the industrial requirements of the locality, if facilities were given to landowners of limited interests to charge their estates, subject to the approval of the Inclosure Commissioners, with sums expended by them in constructing reservoirs and other works for the supply of water, of a character permanently to increase the value of such estates for other than agricultural purposes, or to be otherwise permanently productive of profit to the owners of the estates, and if such landowners were also enabled to charge their estates with sums subscribed by them for the construction of waterworks on the same terms and conditions

A.D. 1877.

as those on which they are now enabled to charge their estates with subscriptions for the construction of railways and canals:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Act to be read as one with the Improvement of Land Act, 1864.

3. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act.

What to be deemed improvements within the Improvement of Land Act, 1864.

4. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer, or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the Inclosure Commissioners, if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the Inclosure Commissioners to take into account the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the Inclosure Commissioners may, if they think fit, sanction the improvement, although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon.

Supply of water to local authority, &c.

5. Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided that every such agreement be approved by the Inclosure Commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

Subscriptions to waterworks

6. Any landowner desiring to charge his estates with subscriptions for the construction of waterworks by a water company may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with moneys subscribed for the construction of railways or navigable canals; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply *mutatis mutandis*, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

Saving for water rights.

7. Nothing in this Act shall be construed to authorise any landowner to injuriously affect any water rights or easements in cases where any person or body of persons would, if this Act had not been passed, have been entitled by law to prevent or to be relieved against the injuriously affecting thereof, unless the landowner first obtain the consent in writing of the person or persons so entitled as aforesaid.

Definitions.

8. In this Act the following words and expressions shall have the following meanings; that is to say,

"The Inclosure Commissioners" means the Inclosure Commissioners of England and Wales:

"The Improvement of Land Act, 1864," means the 27 and 28 Vict. c. 114:

A.D. 1877.

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water:

"Water Company" means any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their own profit:

"Local authority" means any authority having jurisdiction for any public local purpose.

The several words and expressions to which, by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

Reservoirs.

A

B I L L

To give further facilities to Landowners of limited interests in England and Wales to charge their estates with the expenses of constructing Reservoirs for the storage of Water and other similar purposes.

(*Prepared and brought in by Mr. Whalley and Mr. Morgan Lloyd.*)

Ordered, by The House of Commons, *to be Printed,* 12 April 1877.

[Bill 132.] *Under* 1 *oz.*

LORDS AMENDMENTS

TO THE

RESERVOIRS BILL.

Note.—*The page and line refer to the Bill* (103.) *as first printed by the Lords.*

In the title, line 5, after ("Wales") insert ("and Ireland")

Page 1.

Line 2, after ("Commissioners") insert ("and in Ireland of "the Commissioners of Public Works in Ireland")

Line 5, leave out ("Inclosure") and insert ("said")

Lines 11 and 19, leave out ("Inclosure")

Page 2.

Line 9, leave out ("or Ireland")

Line 12, after clause 3, insert clause (A.):

CLAUSE (A.) Certain provisions if 26 & 27 Vict. c. 93. incorporated.

The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

Lines 22 and 38, leave out ("Inclosure")

Page 3.

Lines 8 and 20, leave out ("Inclosure")

Line 24, after ("Wales") insert ("or in Ireland")

Line 27, leave out ("Inclosure")

Page 4.

Line 20, leave out the first ("Inclosure")

Line 21, after ("Wales") insert ("or the Commissioners of "Public Works in Ireland, as the case may require")

[Bill 249.]

LORDS AMENDMENTS

TO THE

RESERVOIRS BILL.

Ordered, by The House of Commons, *to be Printed*,
13 *July* 1877.

[Bill 249.]

Under 1 *oz.*

Roads and Bridges (Scotland) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title, and commencement of Act.
2. Extent of Act.
3. Interpretation.

Continuance of existing Local Acts.

4. Existing local Acts to continue to 1st November 1887 and end of next session of Parliament.

Adoption of the Act.

5. How Act may be adopted in counties.
6. Provision for case of one county adopting and another county not adopting Act.
7. Act may be adopted subject to provisional agreement between county and burgh. Confirmation by Secretary of State.
8. After four years, power to apply to Secretary of State for provisional order to be confirmed by Parliament.
9. Costs to be awarded in certain cases

Road Authorities in Counties and Burghs.

10. Management and maintenance of highways in counties to be in county road trustees, and in burghs in burgh local authority.

Appointment of County Road Trustees, Board, and Committees.

11. Appointment of county road trustees.
12. Mode of election by ratepayers.
13. Trustees designated and incorporated.
14. Appointment of county road board.
15. County to be divided into districts, and district committees appointed.
16. Occasional vacancies to be supplied.
17. Failure to elect not to invalidate acts of trustees.

Meetings of Trustees, Board, and Committee.

Clause.
18. Time and place of general meetings of the trustees.
19. Meetings of board and district committees.
20. Quorum at meetings of trustees, board, and committee.

General Regulations for conducting the Business of Meetings.

21. Regulations as to meetings and proceedings of trustees, board, and district committees.
22. Chairman to be elected, in absence of ordinary chairman.
23. District committees and board to make reports.
24. Appeal from decision of district committee.

Appointment of Officers.

25. Appointment of county officers.
26. Appointment of district officers.
27. Salaries of county road officials. Allocation of general expenditure.
28. Former officers to continue till removed.

General Management in Counties and Burghs.

29. Consolidation of trusts.
30. Abolition of tolls, statute labour, causeway mail, &c.
31. Application of tolls and statute labour money at present leviable.
32. Trustees to purchase private pontages, &c.
33. Roads situated in more than one county.
34. Detached parts of counties to form part of the county by which they are surrounded.
35. List of highways to be made up. Alteration of list.
36. Highways may cease to be such, and other roads may become highways.
37. A highway ceasing to be a highway may be shut up.
38. Toll-houses to be first offered to adjoining proprietors.
39. Provision for footpaths.
40. Boundaries of burghs.
41. Local authority to have management of roads within burghs.

Maintenance and Repair of Highways and Assessments therefor.

42. Surveyor to report on condition of highways, and estimate cost of maintenance.

Clause.
43. Board to meet and consider reports.
44. Roads or highways may be shut up for repairs.
45. Assessments in counties for management, maintenance, and repair.
46. Maintenance of bridges in two districts.
47. Assessment in burghs for maintenance and repair.
48. Former modes of assessment may be retained in certain burghs.
49. Power of road authority to recover expenses of extraordinary traffic.

Construction of new Roads and Bridges.

50. New roads and bridges may be constructed by the board, and assessed for upon proprietors.

Valuation and Allocation of Debt.

51. Clerks of trusts to make out list of debts.
52. Intimation to creditors.
53. Revised list of debts to be made up.
54. Revised list to be open to inspection.
55. Debts to be charged against counties and burghs, and may be compromised.
56. Valuation of debts.
57. Allocation of debts on roads in two or more counties.
58. Allocation of debts between landward parts of counties and burghs.
59. Allocation of debt where road partly situated in England.
60. Certificate of debt to be granted to creditors.
61. Certain road debts may be charged on entailed estates by bond and disposition in security.

Provisions for Payment of Debt.

62. Payment of interest under the provisions of this Act.
63. Trustees and burgh local authority may resolve to pay off debt.
64. Assessment for payment of debt.
65. Trustees and burgh local authority may borrow on security of assessments.
66. Loans to be repaid out of assessments imposed under authority of Act.
67. Provision for protection of lenders on security of assessments.]

Clause.
68. Trustees and burgh local authority may pay off loans, and borrow money for that purpose.
69. Unclaimed instalments to be consigned.
70. Sums payable to persons under disability may be consigned.

General Provisions as to Assessments.

71. Terms at which assessments shall be payable.
72. Collection of assessments.
73. Board to hear appeals.
74. Power to recover assessments imposed by trustees.
75. Appeals against and recovery of assessments in burgh.
76. Burgh may apply certain funds to maintenance of roads in lieu of assessments.

Special Provisions as to certain Bridges.

77. As to cost of maintaining, &c. certain bridges.

Miscellaneous.

78. Authentication of documents relating to the execution of Act.
79. Minutes of trustees, &c. to be receivable in evidence.
80. Actions now pending transferred to trustees under Act.
81. Former trustees to account for moneys and deliver up books.
82. Books of former trustees to be evidence.
83. Trustees not to incur personal liability.
84. Trustees not to hold any office of profit or participate in profits of any contract.
85. No person holding office to participate in profits of any contract.
86. Trustee may act as sheriff or justice.
87. Moneys to be lodged in bank.
88. Cheques on bank account of trustees or board.
89. Cheques on bank account of district committee.
90. Execution of bonds and other securities.
91. Mortgages to be personal estate.
92. Application of moneys not otherwise appropriated.
93. Audit of accounts.
94. Repeal of Acts.
95. Incorporation of parts of General Turnpike Act.
96. Recovery and application of penalties.

Schedules.

A

B I L L

TO

Alter and amend the Law in regard to the Maintenance and Management of Roads and Bridges in Scotland. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and commencement of Act.

1. This Act may be cited for all purposes as "The Roads and Bridges (Scotland) Act, 1877," and, except in so far as otherwise expressly provided, it shall commence and take effect in each county (including the burghs wholly or partly with the same) from the date of its adoption therein, as herein-after provided for.

Extent of Act.

2. This Act shall apply to Scotland only, except in so far as otherwise expressly provided.

Interpretation.

3. In this Act the following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction:

"The Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State:

"Sheriff" shall include sheriff-substitute:

"The trustees" shall mean the county road trustees appointed and acting under this Act:

"The board" shall mean the county road board appointed and acting under this Act:

"The district committee" shall mean the district road committee appointed and acting in any district under this Act:

"Clerk," "treasurer," and "surveyor," shall respectively mean the county road clerk, the county road treasurer, and the county road surveyor, appointed and acting for the time being under this Act:

"County" shall mean (except where otherwise expressly provided) the county exclusive of any burgh wholly or partly situated therein:

"Burgh" shall mean and include royal burgh, parliamentary burgh, and every populous place the boundaries whereof have

A.D. 1877.

been fixed and ascertained under the provisions of the General Police and Improvement, Scotland, Act, 1862, or of the Act first therein recited, or have been determined by or under any local Act, and the population of which according to the census last taken exceeds ten thousand:

"Police burgh" shall mean every such populous place, the population of which, according to such census, does not exceed ten thousand:

"Burgh local authority" or "local authority of any burgh" shall mean the magistrates and council, commissioners of police, or other local authority having the management and control of the streets, and the power to levy assessments in respect thereof, in any burgh, under or in virtue of any general or local Act or of this Act:

"Parish" shall include united parish, but it shall be exclusive of any burgh wholly or partly situated therein:

"Turnpike road" shall include all roads and bridges forming part of any turnpike road trust and all bridges under the management of any separate bridge trust:

"Statute labour road" shall include all roads and bridges maintained by statute labour or by moneys raised as the conversion or in lieu thereof, or by bridge money:

"Highway" shall mean and include all existing turnpike roads, all existing statute labour roads, and all other roads when declared to be highways under the provisions of this Act, all public streets and roads within any burgh (not including any street or road which any person is at the commencement of this Act bound to maintain at his own expense), and all bridges forming part of any highway:

"Bridge" shall include the accesses thereof:

"Tolls" shall include pontages:

"Causeway-mail" shall include through customs and all exactions of whatever kind, other than tolls or assessments, made or which may be made in respect of the use of or passage over the streets or roads within any burgh, but shall not include petty customs except in so far as they are exacted in respect of goods, articles, things, or animals passing or carried through such burgh:

"Proprietor" and "lands and heritages" shall have the same meanings as are attached thereto respectively in the Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act for the valuation of lands and heritages in Scotland;" and the expression "the valuation roll" shall mean the valuation roll in force for the time in any county or

burgh, as the case may be, made up under the authority of the said Act, or any other Act relating to the valuation of lands and heritages in Scotland:

"Ratepayer" shall mean any person (not being a commissioner of supply) being of full age and not subject to any legal incapacity, whose name appears as proprietor, tenant, or occupier of lands and heritages entered on the valuation roll for the county as of the annual value of four pounds and upwards, or as joint proprietor, tenant, or occupier of lands and heritages entered on such roll of an annual value which, when divided by the number of such joint proprietors, tenants, or occupiers, yields a quotient of four pounds and upwards:

"Accountant" shall mean an accountant appointed from time to time for the purposes of this Act by the Secretary of State, who is hereby authorised to make or recall any such appointment by a writing under his hand and seal of office, which shall be published in the Edinburgh Gazette:

"Local newspaper" shall mean any newspaper published in the county or burgh as the case may be, or, if there be no newspaper published therein, any newspaper published in a county or burgh adjoining thereto:

Where in this Act notice is required to be given by "special advertisement," such notice shall be published once in at least two local newspapers.

Continuance of existing Local Acts.

Existing local Acts to continue to 1st Nov. 1887 and end of next session of Parliament.

4. All local Acts now in force for regulating, managing, making, maintaining, or repairing any turnpike road or statute labour road, or other highway situated or partly situated in any county in which tolls and statute labour have not been abolished, shall continue in force until the *first day of November one thousand eight hundred and eighty-seven*, and to the end of the then next session of Parliament, and no longer, unless in the meantime Parliament otherwise provides or this Act shall be adopted in such county.

From and after the time at which any such Act or Acts shall cease to be in force in any county, this Act shall, unless Parliament otherwise provides, commence to have effect therein.

Where any Act relates to a turnpike road which is situated in more than one county, notwithstanding that such Act has ceased, in terms of this Act, to be in force in one county in which such road is situated, it may nevertheless continue to be in force in the other county or counties in which such road is situated.

Adoption of the Act.

How Act may be adopted in counties.

5. The following provisions shall have effect with regard to the adoption of this Act:

A.D. 1877.

(1.) Case of counties which have obtained Private Acts.

(1.) In those counties in which tolls and statute labour have been abolished, or are not exacted, or power has been obtained to abolish them, or to arrange for their abolition, and the management of the whole roads, highways, and bridges therein is vested under any Local Act or Acts of Parliament in one body of trustees, this Act may be adopted in place of the Local Act or Acts in force in such county on a resolution to that effect agreed to by not less than two thirds of the said trustees present and voting at a meeting called by special advertisement on not less than thirty days notice, for the purpose of considering as to the adoption hereof; and the convener of any such county as aforesaid, on a requisition to that effect, signed by any six of the said trustees, being presented to him, shall call a meeting of the said trustees, with a view to consider a resolution in favour of the adoption of this Act, and in the event of such resolution not being carried by the requisite majority as aforesaid, it shall not be lawful to call another meeting with a view to the adoption of this Act for one year thereafter.

(2.) Case of counties which have not obtained Private Acts.

(2.) In any other county this Act may be adopted on a resolution to that effect agreed to by not less than two thirds of the commissioners of supply of such county present and voting at a meeting called by special advertisement for the purpose on not less than thirty days notice; and the convener of any such county as aforesaid, on a requisition to that effect, signed by any six of the commissioners of supply of such county, being presented to him, shall call a meeting of the commissioners of supply, with a view to consider a resolution in favour of the adoption of this Act; and in the event of such resolution not being carried by the requisite majority at such meeting as aforesaid, it shall not be lawful to call another meeting with a view to the adoption of this Act for one year thereafter:

Provision for case of one county adopting and another county not adopting Act.

6. Where it shall happen that this Act has been adopted in any county, but has not been adopted in the county or counties adjoining thereto, any obligation, right, privilege, or duty, in regard to the debt affecting turnpike roads or bridges partly situated in two or more counties, which, had this Act been adopted in the latter county or counties would have fallen upon or belonged to the county road trustees thereof, shall fall upon or belong to the commissioners of supply thereof, and in so far as consisting of or resulting in payments of money, such payments shall be a good charge upon and be defrayed out of the county general assessment of such county or counties:

Provided always, that as soon as this Act shall have been adopted in such county or counties, the obligation, right, privilege, or duty before mentioned shall be transferred from the said commissioners of supply to the county road trustees of the said county or counties: Provided that, where necessary for giving effect to the provisions contained in this section, "county road trustees" or "trustees" shall be held to mean and include commissioners of supply; and "county road clerk" shall be held to mean and include clerk of supply.

Wherever in terms of this section any obligation in regard to the debt affecting a turnpike road or bridge falls upon the commissioners of supply of a county, the trustees of such road or bridge shall, after providing for the expense of managing and maintaining the same, pay over to such commissioners of supply the surplus of income accruing to them from the tolls exacted on such road or bridge; and the said trustees shall not be entitled to reduce the tolls exacted thereon without the consent of such commissioners of supply.

Act may be adopted subject to provisional agreement between county and burgh. Confirmation by Secretary of State.

7. It shall be lawful for the commissioners of supply of any county, at a meeting called by special advertisement on not less than ten days notice, to resolve to adopt this Act, subject to the stipulations contained in a provisional agreement entered into between them and the local authority of any burgh or burghs situated wholly or partly within such county, and signed by the convener and clerk of supply of such county, and by the provost or chief magistrate and town clerk or clerk of such burgh or burghs, as duly authorised in that behalf, in regard to the debts affecting and the cost and manner of managing and maintaining any road or roads or any bridge or bridges in the neighbourhood of such burgh or burghs; but in the event of a resolution being passed, subject to such stipulations, such resolution and agreement shall not take effect until the same shall have been approved of by one of Her Majesty's Principal Secretaries of State, after such inquiry as to him shall seem proper. Such approval may be signified under the hand and seal of office of such Secretary of State, and the writing signifying the same shall set forth a date, not being earlier than *the first day of June* then next ensuing, from and after which such approval shall take effect. From and after the date set forth in such writing, the provisional agreement shall become a final agreement, and after being recorded in the books of council and session shall have the same effect as if it were herein contained, and the provisions of this Act shall be read and construed subject to the stipulations of such agreement.

After four years power to apply to

8. At the expiration of *four* years after the passing of this Act, if the Act shall not have been adopted in any county, it shall be

A.D. 1877.

Secretary of State for provisional order to be confirmed by Parliament.

lawful for the commissioners of supply thereof to apply to the Secretary of State to make a provisional order that the Act shall, from a date to be therein named, not being earlier than *the first day of June* then next ensuing, come into force in such county, subject to conditions contained in such order in regard to the debts affecting and the cost and manner of managing and maintaining any road or roads or any bridge or bridges in the neighbourhood of any burgh within or partly within such county.

Upon the receipt of any such application, such Secretary of State shall cause notice thereof to be given to the clerk of any burgh and to any other person, body, or corporation who shall appear to be affected thereby, and shall direct a local inquiry to be held in respect of the matters mentioned in the petition, after giving fourteen days notice of the time, place, and subject of the inquiry.

After receiving the report made upon such inquiry, such Secretary of State may issue a provisional order under his hand and seal of office in relation to the matters mentioned in the application, either in accordance with the prayer thereof, or with such modifications or alterations as may appear to him to be requisite.

A provisional order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament; and it shall be lawful for such Secretary of State as soon as conveniently may be to obtain such confirmation; and the Act confirming such provisional order shall be deemed to be a public general Act of Parliament, and is hereafter referred to as the confirming Act. From and after the passing of such confirming Act, this Act shall commence to have effect in such county as if it had been adopted therein as herein-before provided, but subject to the provisions of the confirming Act, which shall have effect as if they were herein contained.

It shall be lawful for such Secretary of State to make such order as he thinks fit in reference to the reasonable costs, charges, and expenses properly incurred in opposing such provisional order.

All costs, charges, and expenses incurred by such Secretary of State in relation to any provisional order under this Act, to such amount as such Secretary of State thinks proper to direct, and all costs, charges, and expenses of promoting or opposing such provisional order, but not including the costs incurred in promoting or opposing any bill confirming such order before a committee of either House of Parliament as after mentioned, to such amount as may be allowed by such Secretary of State, shall be a charge against the county road trustees if a confirming Act is obtained as aforesaid, and shall be a charge against the county general assessment if such Act is not obtained, and shall be paid accordingly

to such Secretary of State and to such opponents respectively, in such manner and at such times, and either in one sum or by instalments, as such Secretary of State may order, with power to such Secretary of State to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as such Secretary of State may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

The Court of Session may, on the application of the Lord Advocate on behalf of such Secretary of State, or on the application of any person interested, interpone their authority to any order made by such Secretary of State under this section, and grant decree conform thereto, upon which execution and diligence may proceed in common form.

Costs to be awarded in certain cases.

9. When any bill for confirming a provisional order under the preceding section is referred to a committee of either House of Parliament upon the petition of any person opposing such bill, the committee shall take into consideration the circumstances under which such opposition was made to the bill, and whether such opposition was or was not justified by such circumstances, and may award costs accordingly, to be paid by the promoters or the opponents to the bill, as the committee may think just; and the committee shall find and determine against what funds such costs shall be chargeable.

Any costs under this section may be taxed and recovered under the Act passed in the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

Road Authorities in Counties and Burghs.

Management and maintenance of highways in counties to be in county road trustees, and in burghs in burgh local authority.

10. From and after the *commencement of this Act* in each county the management and maintenance of the roads, highways, and bridges within the county shall, as herein-after particularly provided, be vested in and incumbent on the county road trustees herein-after mentioned, and the management and maintenance of the roads, highways, and bridges within each burgh situated in or partly situated in such county shall be vested in and incumbent on the burgh local authority as herein-before defined.

Appointment of County Road Trustees, Board, and Committees.

Appointment of county road trustees.

11. From and after the *commencement of this Act* the following persons shall be the "County Road Trustees;" viz.,

(1.) All persons being commissioners of supply of the county, whose names appear as such on the list of commissioners of supply of the county for the time being in force made up under the Act passed in the nineteenth and

A.D. 1877.

twentieth years of the reign of Her present Majesty, chapter ninety-three, and the Act passed in the twentieth year of said reign, chapter eleven, but subject to the provision that no factor whose name appears on such list shall be entitled to act or vote, except in the absence of the proprietor:

(2.) One person appointed at pleasure by and under the seal of every corporation or incorporated company assessed for the purposes of this Act upon an annual valuation of eight hundred pounds or upwards, as appearing from the valuation roll of the county:

(3.) One person (herein-after called an elected trustee), to be elected once in every three years, as herein-after provided, by the ratepayers under this Act from among their own number, in each parish wholly or partially situated in the county:

(4.) One person (who shall be deemed to be an elected trustee) appointed from time to time from among their own number by the commissioners of police of any police burgh as herein-before defined, within or partly within the county:

Provided, that where the management and maintenance of the highways within any burgh shall have been, as herein-after provided, transferred to the county road trustees, the provost or chief magistrate and one member of the town council of any royal or parliamentary burgh, and the provost or chief magistrate and one of the commissioners of police of any other burgh shall be county road trustees under this Act, and shall be deemed to be elected trustees.

Mode of election by ratepayers.

12. Within *six weeks* after the commencement of this Act, the ratepayers of each parish within the county entitled to elect a trustee for the purposes of this Act shall meet, and elect one person of their own number to be such trustee, who shall continue in office for the three years succeeding such election, and the convener of the county shall call the meeting for such election on not less than ten days notice given by special advertisement; and once in every three years thereafter the said ratepayers shall meet for the same purpose, and shall on the like notice be called and convened by the county road clerk; and at every such subsequent meeting one person as aforesaid shall be elected as a trustee for the purposes of this Act for the three years succeeding his election: Provided that the chairman of any such meeting shall immediately transmit to the convener of the county in the case of the first election under this Act, and thereafter to the county road clerk, a certificate under his hand, setting forth the name and

designation of the person elected, and such certificate shall be sufficient evidence of his election. A.D. 1877.

The ratepayer present having the largest valuation in the parish, as appearing from the valuation roll, shall be entitled to take the chair at any meeting for the election of a trustee; and the valuation roll, which the inspector of poor of the parish shall be bound to produce at any such meeting, shall be evidence of the right of any ratepayer whose name appears therein to vote at such meeting: Provided that no commissioner of supply shall be entitled to vote at such meeting, and that no person shall be entitled to vote thereat in respect of any lands and heritages within a burgh wholly or partly situated in such parish.

Trustees designated and incorporated.

13. The trustees shall be a body corporate, under the name of the County Road Trustees of the county, as the case may be, and under that name they may sue and be sued, purchase, take, hold, and dispose of lands and other property for the purposes and subject to the provisions of this Act.

Appointment of county road board.

14. The trustees shall at their first general meeting hereinafter mentioned, and thereafter at each annual general meeting, appoint the "county road board," consisting of not more than *thirty* of the trustees, and not less than one third and not more than one half of the board shall be elected trustees, and the chairman of the trustees shall be over and above ex officio a member of the board and chairman thereof; and the board shall have and may exercise all the powers, rights, and privileges conferred on the trustees by this Act, except the power of making an assessment, or in so far as the trustees shall otherwise expressly provide, but shall be subject in all respects to any requisitions, orders, regulations, or instructions which may from time to time be issued by the trustees.

County to be divided into districts, and district committees appointed.

15. The trustees shall divide the county into districts for the purpose of managing the highways under their control, and for any other purposes under this Act, and shall define the limits and boundaries of such districts, and may from time to time alter such limits and boundaries, and they shall annually appoint for each district such of the trustees as they think fit to be a district committee (of whom one, being a member of the county road board, shall be declared to be chairman); and not less than one third and not more than one half of the district committee so appointed shall consist of elected trustees representing parishes or burghs or police burghs within the district, as herein-before provided. The enactments contained in this section shall not be imperative in the case of counties containing fewer than six parishes.

A.D. 1877.

Occasional vacancies to be supplied.

16. If any trustee or member of the board or of a district committee, or the chairman of a district committee, shall resign (which he may do by any writing under his hand, addressed to the chairman of the trustees) or shall refuse to act, or shall die, or become disqualified, the board, if they think fit, may appoint a person, being a commissioner of supply or an elected trustee, as the case may be, and subject to the provisions herein-before contained as to the constitution of the board and the district committees respectively, to supply his place, and the person so appointed shall remain in office only so long as the person in whose room he was appointed might have held office.

Failure to elect not to invalidate acts of trustees.

17. If the town council of any royal or parliamentary burgh, or the commissioners of police of any other burgh or of any police burgh, or the ratepayers of any parish, or any incorporated company as herein-before mentioned, shall fail to elect or appoint a person to be a trustee for the purposes of this Act, or if any person elected by such town council or commissioners of police or ratepayers, or appointed by such incorporated company, to be a trustee, or any other trustee, shall refuse to act, or shall resign, die, or become disqualified, the acts and proceedings of the remaining trustees, whether acting as trustees or as members of the board or of a district committee, as herein-after provided, shall nevertheless be deemed to be the acts and proceedings of the trustees, board, or district committee, as the case may be, and shall be as valid and effectual as they would have been if such failure, refusal, resignation, death, or disqualification had not occurred.

Meetings of Trustees, Board, and Committee.

Time and place of general meetings of the trustees.

18. The first general meeting of the trustees shall be called by the convener of the county by special advertisement, and shall be held not later than *three* months after the commencement of this Act, at such time and place as the said convener shall appoint, and another general meeting of the said trustees shall be held on the *thirtieth day of April* immediately following or on such other day as may be resolved on at the first general meeting of the trustees, and at such place as the said trustees may appoint; and thereafter an annual general meeting of the trustees shall be held on the twenty-ninth day of September in each year, or on such other day as may be resolved on at any general meeting of the trustees, and at such place as the trustees may from time to time appoint; and at the said first general meeting, and at every annual general meeting, the trustees present shall elect one of their own number to be chairman of the trustees, and in the event of an equal number of votes being given for two candidates, the candidate having or repre-

senting the largest valuation in the county, as appearing on the valuation roll, shall be held to be elected; and such chairman shall hold office until the annual general meeting succeeding his appointment, or until his successor is appointed, and may be re-elected on the expiration of his first or other period of office; and the chairman shall, when present, preside at all meetings of the trustees.

Meetings of board and district committees.

19. The time and place of the first meeting of the board shall be fixed by the trustees, and the time and place of any subsequent meeting may be fixed by the board itself; and the time and place of the first and subsequent meetings of each district committee shall be fixed by the board, without prejudice to the right of adjournment or of holding special meetings herein-after provided.

Quorum at meetings of trustees, board, and committee.

20. The trustees shall at their first meeting determine what number of trustees shall be requisite to constitute a quorum at meetings of the trustees and of the board, and of the several district committees, respectively; and it shall be in the power of the trustees to alter such quorum from time to time as they may think fit; but no such alteration shall take effect until after the expiration of three months from the date of its being made and, in the case of a district committee, of its being communicated in writing by the county road clerk to the chairman thereof.

General Regulations for conducting the Business of Meetings.

Regulations as to meetings and proceedings of trustees, board, and district committees.

21. The following provisions shall be applicable to the meetings and proceedings of the trustees, the board, and the district committees respectively:

(1.) Special meetings of the trustees or of the board may be called by the chairman, or in the event of his illness, death, resignation, or absence from the county, by the clerk, at any time he may think fit, by special advertisement or by circular sent through the post to each trustee or member of the board, stating the object of such meeting; and on a requisition stating the object of such special meeting, and signed by *five* trustees in the case of a special meeting of the trustees, and by *three* members of the board in the case of a special meeting of the board, being presented to the chairman, or in the event of his illness, death, or resignation, or absence from the county, to the clerk, the chairman or clerk, as the case may be, shall call a meeting of the trustees or of the board, as the case may be, by special advertisement or by circular sent through the post to each trustee or member of the board, stating the object of such meeting, and the place and date

A.D. 1877.

of such meeting: Provided, that no special meeting of the trustees or board shall be called on less than ten days notice:

(2.) Special meetings of any district committee may be called at any time by the district clerk, on the orders of the chairman of the committee, by circular stating the object of such meeting, and the place and date of such meeting, addressed to each member of the committee, and forwarded by post not less than eight days before such meeting:

(3.) Any meeting, general or special, of the trustees, or of the board or district committee, may be adjourned to a time and place to be specified in the minutes of such meeting; and in the event of a quorum not being present at any general or special or adjourned meeting the clerk of the meeting shall, in the case of meetings of the trustees or of the board, by special advertisement or circular, and in the case of district committees by circular, as herein-before provided, call another meeting, to be held at the hour and place and on any day, not being less than ten or eight days after the date of the special advertisement or circular, as the case may be, within three weeks after the day originally fixed for such meeting:

(4.) Any business appointed by this Act to be transacted, and any assessment by this Act authorised to be imposed at any general or special meeting of the trustees or the board or any district committee, may be transacted or imposed at any adjourned meeting thereof; provided, that no business shall be brought before or transacted at such adjourned meeting which was not brought or appointed to be brought before the original meeting which was so adjourned:

(5.) No motion in regard to any matter or business not mentioned in the advertisement or special advertisement or circular calling any meeting shall be competent, unless notice of the same had been given at the immediately preceding meeting (not being a special or adjourned meeting) or by circular sent through the post not less than eight days before the meeting and addressed to every person entitled to be present and vote thereat:

(6.) Where the business before any meeting relates to the valuation or payment of debts, or the interest thereof, or the mode of providing therefor, or the construction of new roads or bridges, the assessments to provide for the

payment or cost of which are by this Act laid on proprietors only, no elected trustee shall be entitled to vote in regard thereto, or in regard to such assessments:

(7.) No person shall have more than one vote at any meeting under this Act, although he may have more than one qualification for voting, except as herein-after provided in the case of the chairman or preses of any meeting; but this provision shall not prevent a person whose name is entered on the list of commissioners of supply as factor for more than one proprietor from voting on behalf of each such proprietor in his absence at a meeting of the trustees.

Chairman to be elected in absence of ordinary chairman.

22. In the absence of the chairman at any meeting of the trustees or of the board or of any district committee, any person elected by the majority of the trustees or members present at such meeting, shall preside thereat; and in case of an equality of votes the trustee or member present and proposed as chairman having or representing the largest valuation in the county or district, as the case may be, and as shown by the valuation roll, shall preside at such meeting, and in all other cases of equality of votes the chairman shall have a casting as well as a deliberative vote.

District committees and board to make reports.

23. Each district committee shall annually make a report of their proceedings to the board, with detailed accounts of their receipts and expenditure, and shall make reports on such other matters at such times and in such manner as may be prescribed by the trustees or the board; and the board shall before each annual general meeting of the trustees make a report of their proceedings to the trustees, with detailed accounts of their receipts and expenditure (if any), and shall make reports at such other times on such matters as may be prescribed by the trustees; and along with such annual report the board shall lay before the trustees the reports and accounts of the district committees respectively.

Appeal from decision of district committee.

24. Any person who shall object to or think himself aggrieved by the decision or resolution of any district committee may appeal, at any time within one month after such decision or resolution, to the board, whose determination therein shall be final; provided, that such appeal shall not prevent the execution of any of the powers of this Act in any matter affecting any other person not being a party in such appeal.

Appointment of Officers.

Appointment of county officers.

25. The trustees may appoint a clerk, who shall also be clerk to the board, and shall be called the "county road clerk," a treasurer, who shall be called the "county road treasurer," a surveyor, who

A.D. 1877.

shall be called the "county road surveyor," and a collector, who shall be called the "county road collector," and, if it shall be found expedient, may appoint more persons than one to execute any of the above-named offices, or may appoint one person to execute two or more of them, and may also appoint such other officers and servants as they may think necessary for carrying this Act into execution; and such officers and servants shall perform the duties from time to time prescribed by the trustees or the board, and shall be subject to removal at any time by the trustees or the board, unless in so far as the power of removal may be modified by special written agreement, and shall find such security as the trustees or the board shall require.

Appointment of district officers.

26. Each district committee may from time to time appoint a clerk and a treasurer (it being competent to appoint one person to hold both offices) and a district road surveyor, and prescribe their or his duties; and, subject to the approval of the board, the district committee may fix the salaries to be paid to and the security to be taken from such clerk and treasurer and district road surveyor, for the discharge of their or his duties, where such security is required to be taken; and every such officer shall be subject to removal at any time by the district committee, unless in so far as the power of removal may be modified by special written agreement approved of by the board: Provided that it shall be competent for any district committee to appoint as clerk or treasurer or as clerk and treasurer and as district road surveyor any of the officers appointed by the trustees or the board or by another district committee. Every district road surveyor shall be subject to the reasonable orders of the county road surveyor.

Salaries of county road officials. Allocation of general expenditure.

27. Subject to the approval of the trustees the board shall fix the salaries and allowances to be paid to the several officers and servants appointed and employed by the trustees and the board; and such salaries and allowances, and all other necessary general expenditure in the execution of this Act, shall be paid out of the several funds and revenues at the disposal of the trustees, in such manner, at such times, and in such proportions as the trustees shall from time to time fix and determine.

Former officers to continue till removed.

28. The clerks, treasurers, surveyors, collectors, and all other officers who have been appointed under and employed in the execution of any general or local Act in force at the commencement of this Act relating to the roads, highways, and bridges within the county, shall respectively continue to hold and exercise their offices thereafter until they shall respectively be removed by the trustees or board or burgh local authority, as the case may be, or shall

resign or be incapable of executing their offices, and shall be subject to the like rules, regulations, and penalties in all respects as if they had been appointed under the authority of this Act; and it is hereby provided that the trustees and burgh local authority respectively shall have a discretionary power to grant to any of the officers before mentioned, or to any of the officers appointed under this Act, such superannuation allowance on their retirement or removal from their respective offices as they shall deem fit.

General Management in Counties and Burghs.

Consolidation of trusts.

29. From and after the *commencement of this Act*, the whole turnpike roads, statute labour roads, highways, and bridges within each county respectively shall form one general trust, with such separate district management as shall be prescribed by the trustees as herein-after provided; and all the roads, bridges, lands, buildings, works, rights, interests, moneys, property, and effects, rights of action, claims and demands, powers, immunities, and privileges whatever, except as herein-after provided, vested in or belonging to the trustees of any such turnpike roads, statute labour roads, highways, and bridges within the county, shall be by virtue of this Act transferred to and vested in the county road trustees appointed under this Act, who, subject to the qualifications herein-after expressed, shall be liable in all the debts, liabilities, claims, and demands in which the trustees of such turnpike roads, statute labour roads, highways, and bridges are or were liable under any general or local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, reduced, or extinguished.

Abolition of tolls, statute labour, causeway mail, &c.

30. From and after the *fifteenth day of May*, or from and after the *twenty-sixth day of May* when the leases of the tolls in any county run from that date, immediately following the commencement of this Act in any county in Scotland, all tolls within such county, and within any burgh wholly or partly situated therein, and all causeway mail within any such burgh shall be abolished, and the exaction of statute labour, and any payments of money by way of conversion thereof, and all bridge money and assessments heretofore leviable for the maintenance of bridges within such county or burgh, shall cease and determine, any Act or Acts to the contrary notwithstanding; and all turnpike roads and bridges within the same shall thereafter be and become highways, and open to the public free of tolls and other exactions, within the meaning of and for the purposes of this Act.

Application of tolls and statute

31. Until the said *fifteenth day of May*, or *twenty-sixth day of May*, as the case may be, the tolls and revenues of each of the

A.D. 1877.

labour money at present leviable.

roads now maintained as turnpike roads, and all assessments now leviable for the maintenance of roads, highways, and bridges within a county, shall respectively be received and applied by the trustees to the several purposes to which they are respectively applicable under the existing Acts relating thereto.

Trustees to purchase pontages, &c.

32. The trustees of any county or counties, and the local authority of any burgh or burghs, shall adjust and settle with the proprietors or persons or trustees having the management of any bridge or bridges, forming part of or connecting any highways, whether situated wholly in one county or burgh or not, belonging to any person or corporation, at which pontages are leviable under any local Act of Parliament, what compensation shall be paid to him or them in respect of such pontages abolished by this Act; and if they and such person or corporation cannot agree as to the compensation to be made for the said pontages, then the same shall be fixed and determined in the same manner as is herein-after provided in relation to the valuation of road debts, and shall be provided for in the same manner as road debts: Provided that where such bridge or bridges is or are not situated wholly within one county or burgh, the sums paid under this section shall be allocated in the same manner as is herein-after provided in relation to the allocation of road debts; and such bridge or bridges shall, after the compensation foresaid has been fixed and determined, be highways, and be vested, managed, and maintained as such, and where not situated wholly in one county or burgh, shall be subject to the provisions herein contained with regard to bridges similarly situated belonging to turnpike trusts at the commencement of this Act.

Roads not wholly situated in one county or burgh.

33. Where any trust existing at the commencement of this Act embraces a turnpike road which is not situated wholly within one county or burgh the following provisions shall have effect; (that is to say,)

(1.) Where this Act shall have been adopted or shall be in force in each of the counties in which such road is situated:

(*a.*) The portion of such road within each such county or any burgh therein shall be vested in and managed and maintained by the trustees, board, and district committees of the county, or the local authority of the burgh, as the case may be, in which such portion is situated:

(*b.*) The whole assets of the trust shall, except as herein otherwise provided, be valued and allocated among the trustees of the respective counties and local authorities of the burghs situated

therein in the proportion and in the manner in which the debt affecting such turnpike trust shall be valued and allocated among the trustees of such counties and the local authorities of such burghs respectively under the provisions of this Act:

(*c.*) All lands, heritages, works, and buildings belonging to any such trust locally situated within any county or burgh shall be the property of the trustees of such county or local authority of such burgh, as the case may be, within which the same are so situated, and shall be applied and used or may be sold and disposed of under the powers and for the purposes of this Act:

(*d.*) Where a bridge is not situated wholly within one county or burgh, the expense of the maintenance of the same shall, failing agreement, be allocated upon and be a charge against the trustees of the county or counties and local authorities of the burgh or burghs within which it is partly situated, as nearly as may be in the same manner as is herein provided in relation to the allocation of road debts between the trustees of a county or counties and the local authority of a burgh or burghs respectively:

(2.) Where this Act shall have been adopted or shall be in force in one or more of the counties or burghs in which such road is situated, but shall not have been adopted or shall not be in force in all of such counties or burghs:

(*e.*) The portion of such road within any county or burgh in which this Act has been adopted or is in force shall be vested in and managed and maintained by the trustees, board, and district committees of the county or the local authority of the burgh, as the case may be, in which such portion is situated:

(*f.*) The portion of such road within any county or burgh in which this Act has not been adopted or is not in force shall continue to be vested in and managed and maintained by the trustees having the management thereof at the commencement of this Act:

(*g.*) The whole assets of the trust shall, except as herein otherwise provided, be valued and allocated among

A.D. 1877.

the trustees of the respective counties and local authorities of the burghs situated therein and the trustees having the management of such road, as nearly as may be, in the proportion and in the manner in which debts affecting turnpike trusts shall be valued and allocated among the trustees of counties and local authorities of burghs respectively under the provisions of this Act:

(*h.*) All lands, heritages, works, and buildings belonging to the trust locally situated within any county or burgh shall be the property of the trustees of such county or local authority of such burgh within which the same are so situated or the trustees having the management of such road, as the case may be, and shall be applied and used or may be sold and disposed of under the powers and for the purposes of this Act or of the Act under which the trustees having the management of such road were constituted, as the case may be:

(*i.*) Where a bridge is not situated wholly within one county or burgh, the expense of the maintenance of the same shall, failing agreement, be allocated upon and be a charge against the trustees of the county and local authorities of the burgh within which it is partly situated and the trustees having the management of such road, as the case may be, as nearly as may be in the same manner as is herein provided in relation to the allocation of road debts between the trustees of the county or counties and the local authorities of a burgh or burghs respectively.

Detached parts of counties to form part of the county by which they are surrounded.

34. Any detached part of a county shall, for the purposes of this Act, be considered as forming part of that county by which it is surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which it has the longest common boundary: Provided that such detached parts of counties, if consisting only of parts of parishes, shall respectively be considered for all the purposes of this Act to be parts of the parishes by which they are surrounded, or if partly surrounded by two or more parishes, then as forming part of that parish with which they have the longest common boundary.

A.D. 1877.

A commissioner of supply, the subject of whose qualification is situated within any such detached part of a county, shall be entitled to act as a trustee under this Act for the county of which such detached part is in terms of this section considered to form a part; but shall not be entitled to act as a trustee for such first-mentioned county unless he possesses a qualification beyond the boundaries of such detached part thereof sufficient to entitle him to be enrolled as a commissioner of supply for such county.

A ratepayer, the subject of whose qualification is situated within any such detached part of a county, shall be deemed to be a ratepayer within the county of which such detached part is in terms of this section considered to form a part; but shall not be deemed to be, in respect thereof, a ratepayer of such first-mentioned county.

List of highways to be made up. Alteration of list.

35. The board shall, at their first meeting, or at an adjournment thereof, make up a list of the roads, highways, and bridges under their management and control; but no road, highway, or bridge shall be put on such list unless it was at the commencement of this Act in use to be maintained out of public funds derived from tolls or assessments or other sources of revenue. The roads, highways, and bridges on such list, and no other, shall be maintained and repaired out of the assessments levied under this Act; and no alteration on or addition to such list shall be made except at an annual general meeting of the trustees.

Highways may cease to be such, and other roads may become highways.

36. The trustees may, on a written report from any district committee, declare, at any annual general meeting, that any highway shall cease to be a highway within the meaning and for the purposes of this Act, and that whether another highway shall have been substituted therefor or not; or that any road or bridge which at the commencement of this Act was not maintained out of public funds derived as aforesaid, shall be a highway within the meaning and for the purposes of this Act; but such declaration shall not be competent unless the county road clerk shall have given notice of the same by special advertisement, and by printed notices affixed to the church door of every parish in which any part of such road, highway, or bridge is situated, and also affixed in some conspicuous place at both ends of such road, highway, or bridge, for at least one month before the date of the meeting at which such declaration is made.

A highway ceasing to be a highway may be shut up.

37. After a road has, as herein-before provided, ceased to be a highway, the trustees may direct it to be shut up, and give such notice that it has been shut up as they shall think fit, and the ground occupied by such road, in so far as not required for the

A.D. 1877.

purposes of any highway shall fall and belong to the person or persons whose lands immediately adjoin thereto, and if any question shall arise as to whether such ground is required for the purposes of any highway, or as to the person or persons to whom it should fall and belong, the same shall be disposed of by the sheriff, whose decision shall be final.

Any determination of the trustees under this and the preceding section shall be final and conclusive, and not subject to review in any court or by any process or proceeding whatsoever, unless any three ratepayers who shall be dissatisfied with such determination shall at any time within fourteen days after the date thereof appeal to the sheriff, who shall hear and determine the appeal in a summary way, and the decision of the sheriff shall be final and not subject to review, and the expenses of such appeal shall be in the discretion of the sheriff.

Toll-houses to be first offered to adjoining proprietors.

38. The trustees before selling any toll-house or other building belonging to them shall first offer the same, together with the site thereof, to the person or persons whose lands immediately adjoin thereto, at a price to be fixed by a valuator, to be named by the sheriff, and the price obtained for such toll-house or other buildings shall be applied to the general purposes of this Act.

Provision for footpaths.

39. It shall be lawful for a district committee, subject to the approval of the trustees, to make and, if made, to maintain footpaths on the side or sides of any highway.

Boundaries of burghs.

40. The boundaries of burghs for the purposes of this Act shall be held to be the boundaries thereof as the same are or may be ascertained, fixed, or determined for police purposes under the provisions contained in any general or local Act of Parliament.

Where the boundaries of any burgh run along a highway, the whole breadth of such highway shall, for the purposes of this Act, be held to be within the boundary of the burgh.

Local authority to have management of roads within burghs.

41. From and after the *commencement of this Act*, the local authority of each burgh shall be vested with and have the entire management and control of all the roads, highways, and bridges situated within the same, and shall possess the same rights, powers, and privileges, and be subject to the same liabilities in reference to the roads, highways, and bridges (including the construction of new roads and bridges) therein, as the trustees under this Act possess and are liable to in reference to roads, highways, and bridges (including as aforesaid) in the landward part of the county, and shall also have and may exercise, with reference to the construction,

maintenance, and repair of the roads, highways, and bridges within their respective boundaries, such and the like powers and authorities as they possess with reference to any streets within their respective boundaries: Provided that the local authority of any burgh not containing more than ten thousand inhabitants according to the census last taken may, by a resolution passed at a meeting summoned for the purpose, on not less than one month's notice, by special advertisement, devolve the management and maintenance of the roads, highways, and bridges within the boundaries or forming the boundary thereof upon the trustees of the county within which such burgh or any portion thereof is situated, on payment to such trustees of such an annual sum or upon such terms as may be agreed upon; and in default of such agreement, on payment of such sum or upon such terms as shall from time to time be settled on the summary application of either party by the sheriff, whose decision shall be final: Provided also that any such resolution of the local authority of a burgh may be rescinded, with the consent of and on such terms as may be agreed upon with the county road trustees, and thereupon the original rights, powers, privileges, and liabilities of the said local authority shall revive in full force and effect.

Maintenance and Repair of Highways and Assessments therefor.

Surveyor to report on condition of highways, and estimate cost of maintenance.

42. The surveyor shall, on or before the *thirtieth day of March* in each year make up and deliver to the clerk of the board, and to the clerks of the district committees respectively for the use of such committees—

(1.) A report of the condition of the highways within the county and each district thereof, as the case may be:

(2.) A specification of works and repairs proposed to be executed thereon; and

(3.) An estimate of the sums required for the purposes of the highways within the county and district, as the case may be, for the year from the *fifteenth day of May* immediately following to the *fifteenth day of May* in the year succeeding; and the district committees shall, on or before the *fifteenth day of April* in each year, consider such reports and estimates, and shall immediately transmit the same, together with their recommendations, if any, to the clerk of the board, to be by him laid before the annual meeting of the board.

A.D. 1877.

Board to meet and consider reports.

43. The board shall hold an annual meeting on such day between the *fifteenth day of April* and the *fifteenth day of May* in each year, as they may fix, for the purpose of considering the reports, specifications, and estimates of the surveyor, and relative deliverances of the respective district committees, and shall consider and review the same, and give such orders as may seem necessary thereanent, and their decision shall be final.

Roads or highways may be shut up for repairs.

44. The board or any district committee on a written report from the surveyor or district surveyor that it is necessary to shut up for a limited period any highway, for the purpose of repairing the same, may from time to time authorise the shutting up of such highway for such period as they may deem necessary; provided, that notice of the intention so to shut up a highway shall be given by advertisement in a newspaper circulating in the county or district within which such highway is situated at least fourteen days before such highway shall be so shut up: Provided always, that upon a written report by the surveyor or district surveyor that any highway has become or is about to become dangerous, it may be shut up by the written order of any two members of the board or district committee without any previous notice; but notice shall be immediately given, by advertisement as aforesaid, that it has been shut up.

Assessments in counties for management, maintenance, and repair.

45. The amount required for the management, maintenance, and repair of highways within each district respectively, or, in the option of the trustees, within the several parishes constituting such district, along with a proportion of the general expenses of executing this Act, as allocated by the trustees in manner herein-before mentioned, shall be levied by the trustees by an assessment to be imposed at a uniform rate on all lands and heritages within such districts, or, in the option of the trustees, within each of the parishes constituting such district as aforesaid; and such assessment shall be paid, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which the same is imposed, except in the case of lands and heritages entered in the valuation roll as of the annual value of five pounds or under, in which case the whole of the assessment imposed on such lands and heritages may, in the option of the trustees, be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier; provided, that outgoing tenants or occupiers, removing from lands and heritages during the currency of the year for which such assessments have been imposed, shall have a right of relief against the incoming tenants or occupiers

for the proportion of the assessment applicable to the period of the year remaining unexpired at their removal. A.D. 1877

Maintenance of bridges in two districts.

46. Where any bridge is partly situated in one district and partly in another district, the burden of maintaining such bridge shall be deemed to rest equally on such districts.

Assessment in burghs for maintenance and repair.

47. The amount required for defraying the expense of executing this Act within any burgh where there is no rate or assessment now levied for the maintenance and repair of streets or roads within the same, shall be levied by the burgh local authority, at such rates as may be necessary for the purpose, by an assessment to be imposed and levied at a uniform rate on all lands and heritages within the burgh; and such assessment shall be paid, except as otherwise expressly provided, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which such assessments are imposed, unless where the name of the tenant or occupier is not set forth in the valuation roll, in which case the whole of the assessment imposed on such lands and heritages shall be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier.

Former modes of assessment may be retained in certain burghs.

48. Where in any burgh at the time of the commencement of this Act the management and control of the streets and roads within the same, and the power to levy any rates or assessments in respect thereof, is vested in the burgh local authority, in virtue of any general or local Act of Parliament, it shall be lawful to continue to impose and levy such rates or assessments, and the amount required for defraying the expense of executing this Act within such burgh shall be included in the sums for payment of which such rates or assessments may be imposed and levied: Provided always, that such burgh local authority may, at any meeting called for the purpose, on not less than one month's notice, by special advertisement, pass a resolution that such rates and assessments shall, from and after a date to be fixed in such resolution, thenceforth cease to be levied; and in the event of such resolution being carried by a majority of votes, the maintenance and repair of the streets and roads, and all expenses connected therewith and with the execution of this Act, shall, from and after such date, be provided for by a uniform assessment within the burgh as herein-before provided.

Extraordinary Traffic.

Power of road authority to reco-

49. Where by the certificate of their surveyor it appears to the authority which is liable to repair any highway that having

A.D. 1877.

Recovery of extraordinary expenses of extraordinary traffic.

regard to the average expense of repairing similar roads in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by extraordinary traffic thereon arising from working of quarries, building operations, haulage of wood, construction of works, or other exceptional or temporary cause, such authority may recover in a summary manner before the sheriff (whose decision shall be final), from any person by whose order the extraordinary traffic has been conducted, the amount of such extraordinary expenses as may be proved to the satisfaction of the sheriff to have been incurred by such authority by reason of the damage arising from such traffic as aforesaid.

Provided that any person against whom expenses in respect of extraordinary traffic are or may be recoverable under this section, may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such extraordinary traffic, and thereupon the person so paying the same shall not be subject to any proceedings under this section.

Construction of new Roads and Bridges.

New roads and bridges may be constructed by the board, and assessed for upon proprietors.

50. The board, subject to the approval of the trustees, to be given at their annual general meeting, may from time to time, at a meeting to be called for the purpose by special advertisement, or by special circular sent through the post to every member of the board, stating the object of the meeting, resolve to construct any new road or bridge that they may think requisite, or may enter into an agreement with any person or corporation (including the trustees of any adjoining county or the local authority of any burgh) for the construction of any new road or bridge, and may require such person or corporation to provide the whole or any part of the expense of such new road or bridge as a condition of the construction of the same, and all new roads and bridges so constructed shall be highways; and the expense of such construction, so far as payable by the board, shall be raised by an assessment to be imposed and levied as the trustees may determine either on the county or the district or districts within which such new road or bridge is situated, in the same manner and with the same powers, including the power of borrowing money, as is herein-after provided in the case of assessments for payment of debt in so far as the same are applicable thereto; and such assessment shall not extend over a longer period than *fifty* years, and shall be levied from and paid by the proprietors of lands and heritages within such county or district or districts; provided, that

where any such new bridge is not situate wholly within one county or burgh, the agreement for the construction thereof shall provide for the proportions in which the expense of the future maintenance of such bridge shall be divided between the county or counties and burgh or burghs in which the same is partly situated respectively; and failing such agreement such expense shall be allocated and paid as nearly as may be in the same manner as is herein-before provided in the case of a bridge existing at the commencement of this Act, and not wholly situated within one county or burgh.

The burgh local authority shall have the same powers in regard to the construction of new streets or roads or bridges to be wholly or partly situate within the burgh, which the county road trustees have in regard to the construction of new roads or bridges wholly or partly situated within the county; but the assessments for paying or providing for the expense of such construction shall be levied in the same manner as the assessments for maintaining and repairing the streets within the burgh.

Valuation and Allocation of Debt.

With respect to the valuation and allocation of road debts in counties in which such debts have not been previously valued and allocated, the following provisions shall have effect:

Clerks of trusts to make out list of debts.

51. The clerks of the turnpike and statute labour trusts in each county (including the burghs situated wholly or partly therein) shall, whether the roads, highways and bridges, subject to such trusts are wholly situated within such county or not, within *two months* after the date of the commencement of this Act, make out a list of the whole debts of each such trust, distinguishing as far as possible their order of preference, and also showing what proportions thereof consist of principal, and of arrears of interest, and also the amount of interest chargeable and paid upon such principal, if any, and the names of the creditors in such debts, so far as known to them; and such lists shall be deposited in the offices of such clerks for the inspection of all persons interested or claiming to be interested in such debts.

Intimation to creditors.

52. The clerks of the several trusts respectively shall, by special advertisement, and also by notice inserted once in the Edinburgh Gazette, within eight days after the foresaid lists have been deposited, give intimation that such lists have been so deposited, and require all persons claiming to be entitled to payment of any debt affecting the roads, highways, and bridges embraced in such trusts, or the tolls or revenues thereof, to lodge their claims and the vouchers thereof with them on or before a day to be specified in such

A.D. 1877.

notice, which day shall be at an interval of not less than *six weeks* and not more than *two months* from the first publication of such advertisement.

Revised list of debts to be made up.

53. Within *twenty-one* days after the day specified in the said notice, the clerks of the foresaid trusts respectively shall, from the statement made up by them, and the claims and vouchers which may be lodged with them, make up a full and complete revised list of all the debts affecting or alleged to affect the roads, highways, and bridges embraced in such trusts, and the tolls or revenues thereof, and the interest due thereon, and the names and designations of the creditors entitled or claiming to be entitled thereto, with such notes or observations on such claims and vouchers as they may think necessary.

Revised list to be open to inspection.

54. The list of debts revised as aforesaid shall, immediately on the expiry of the last-mentioned period, be docquetted and signed by the clerk of the trust, and thereafter deposited in the office of the county road clerk; and where in any trust there is a road, highway, or bridge situated in more than one county, a copy of such list of debts, docquetted and signed as aforesaid, shall be deposited in the office of the county road clerk of each such county in which this Act has been adopted or is in force, and in the office of the clerk of supply of any such county in which this Act has not been adopted or is not in force; and intimation that the same has been so deposited shall be made by special advertisement, and the said list shall for one month after the first publication of such notice be open for inspection, free of charge, to all persons interested or claiming to be interested therein.

Debts to be charged against counties and burghs, and may be compromised.

55. The debts of each trust, when valued and allocated as herein-after provided, shall be charges against the trustees of the several counties and local authorities of the several burghs respectively within which the roads, highways, and bridges are situated upon which or the tolls or revenues whereof respectively such debts were charges before the commencement of this Act; and it shall be lawful for the trustees of any county or counties, and for the local authority of any burgh or burghs, within which the road, highway, or bridge subject to any such debt is situated or partly situated, to adjust, compromise, and determine, in conjunction with the creditor or creditors, the value of any such debt due or claimed to be due by or from any such trust respectively: Provided that no such adjustment, compromise, or determination shall be effectual unless made or approved of at a general or special meeting of the trustees, or at an ordinary meeting of the burgh local authority, as the case may be.

A.D. 1877.

Valuation of debts.

56. In the event of any debt not being adjusted, compromised, and determined as herein-before provided, it shall be lawful for the trustees or burgh local authority, as the case may be, to tender to the creditor therein a written statement of the value at which such debt is estimated by them; and such statement, if accepted by such creditor, or not objected to by him within the period of one calendar month from the date of such tender, shall be held to ascertain and determine the value thereof; and it shall be lawful to such creditor, if dissatisfied with such statement, within one calendar month from the date of such tender, to require the trustees to name one person to act as arbiter, and such creditor shall also name one person to act as arbiter, and the arbiters so named shall forthwith proceed to ascertain and value such debt; and any one having interest shall be entitled to appear and be heard, and the said arbiters shall ascertain whether any and what debt is due, with the interest thereon, and shall estimate and determine the value of the same, without regard to any personal or other collateral obligation undertaken by trustees or others, and in making such valuation shall take into account the interest paid on such debt out of the trust funds, the state of repair of the roads or bridges to which the debt is applicable, and generally shall take into consideration the market value of such debt, and every circumstance which might in their opinion reduce, enhance, or in any way affect the value thereof; and the decision of the said arbiters shall be final, and not subject to review in any manner or upon any grounds whatever; and in the event of the said arbiters not being able to agree in a decision, or in the event of either party failing to name an arbiter or such arbiter failing to proceed under the arbitration, it shall be lawful for either party to apply to the accountant appointed in terms of this Act, and such accountant shall act as oversman or as sole arbiter, as the case may be, and give a decision, and such decision shall be final: Provided that where any creditor shall be found liable in the whole or any part of the expenses of the arbitration, as determined by the arbiters or accountant (including a reasonable fee to the arbiters or accountant), as the case may be, the same may be deducted from the sum or sums found due to him before payment thereof, or may be recovered in any other way.

Allocation of debts on roads in two or more counties.

57. In case of any trust existing at the *commencement of this Act* comprising any road, highway, or bridge situated in two or more counties in Scotland, whether all of such counties shall have adopted this Act or not, the trustees of such counties re-

A.D. 1877.

spectively may adjust, compromise, and determine in what proportions the debts valued as aforesaid affecting such trust shall be allocated and made chargeable upon such counties respectively, or, if they shall fail to do so, the accountant appointed in terms of this Act, on the application of the said trustees or any of them, shall act as sole arbiter, and shall forthwith proceed to ascertain and determine the proportions in which, according to equity, and taking into consideration the mileage in each county, and all the circumstances of the case, the debt aforesaid ought to be, and shall be, allocated upon, and be a charge against, the several counties respectively, and the decision of such accountant shall be final: Provided that the expenses of such arbitration (including a reasonable fee to the said accountant), shall be payable by the said trustees rateably according to the sum of debt allocated to their respective counties.

Allocation of debts between landward parts of counties and burghs.

58. Where any trust existing at the *commencement of this Act* comprises any road, highway, or bridge situated within or partly within any burgh or burghs, and partly within any county or counties, the trustees of such county or counties whether all of such counties shall have adopted this Act or not, and the local authority or authorities of such burgh or burghs respectively, may adjust, compromise, and determine in what proportions the debts affecting such road, highway, or bridge shall be allocated and made chargeable upon such county or counties, burgh or burghs, respectively; and, on their failing to do so, the accountant, appointed in terms of this Act, on the application of the said trustees, or the said local authorities, or any of them, shall act as sole arbiter, and shall proceed forthwith to ascertain and determine the proportions in which, according to equity, and taking into consideration the mileage in each county or burgh, and all the circumstances of the case, the debts aforesaid ought to be and shall be allocated and be a charge against such trustees and such local authorities respectively, and the decision of such accountant shall be final: Provided that the expense of such arbitration (including a reasonable fee to such accountant), shall be payable by the said trustees or local authority or authorities, rateably according to the sums of debt allocated to their county or counties, burgh or burghs respectively.

Allocation of debt where road partly situated in England.

59. Where any trust existing *at the commencement of this Act* comprises a road, highway, or bridge situate partly in a county in England and partly in a county in Scotland, the trustees of such county in Scotland, failing agreement with the creditors in the debts affecting such trust, may apply in a summary way to the sheriff of such county to value and allocate such debts as the same

should be made to affect the portion of said road or highway situate in Scotland, and after such intimation as he shall think necessary to the creditors in said debts, and others interested, if any, the sheriff shall value such debts on the same principles as are herein-before set forth with reference to other road debts, and shall fix and determine what proportion of the debts so valued shall be made a charge against the said county in Scotland, and his decision shall be final: Provided that nothing herein contained shall prevent the trustees under such trust from continuing to levy tolls on the portion of said road, highway, or bridge situate in England, or shall prejudice the right of the creditors in said debts as against the portion of such road, highway, or bridge so situated, except in so far as the said debts shall have been allocated against the county in Scotland in terms of this Act.

Certificate of debt to be granted to creditors.

60. The trustees, and burgh local authorities shall respectively deliver to each creditor a certificate or certificates in the form or as nearly as may be in the form of Schedule (A.) No. 1. hereunto annexed, signed by the chairman of such trustees or by the provost or chief magistrate of such burgh, as the case may be, and each certificate shall be entered in a register to be kept by the county road clerk or by the clerk of the burgh local authority respectively, and shall be conclusive evidence of the right of such creditor to the said debt, and may be transferred by such creditor, or any other person having right thereto for the time being, by an indorsation in the form or as nearly as may be in the form of Schedule (A.) No. 2. hereto annexed, which transfer shall be entered in the said register; and the person in whose favour such transfer is made and registered shall acquire thereby the whole rights in regard to such debt of the creditor in whose favour such certificate was originally granted.

Certain road debts may be charged on entailed estates by bond and disposition in security.

61. Whereas by section sixty-eight of the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, it is enacted "that it shall "and may be lawful for any proprietor or heir of entail in "possession of any entailed estate, or the tutor or curator "of such proprietor or heir of entail who may be desirous of "advancing or lending any sum or sums of money for the purpose "of making or maintaining any turnpike road or building any "bridge on the same to be made or built subsequent to the passing "of this Act either to bind himself personally as a trustee of such "turnpike road, and also to bind the succeeding heirs of entail for

A.D. 1877.

" the repayment of any such sum or sums of money to any person " or persons who may advance the same to the trustees of such " turnpike road, or to advance such sum or sums, and to render " the same a burden upon the said entailed estate and the suc- " ceeding heirs of entail, or having advanced such sum or sums, to " borrow the like sum or sums, and to bind himself and the said " estate and the heirs of entail succeeding thereto for the same; " and all bonds and obligations for money so to be advanced or " borrowed and applied shall be held to bind such proprietors in " cases where they have personally bound themselves and also the " heirs of entail in such estates for the repayment of such money, " and such bonds and obligations shall be valid and effectual " against the granter of the same and also against the heirs of " entail succeeding to them in such entailed estates, and such sums " shall be and continue to be a real burden on such estates till " repaid out of the tolls and duties levied on such turnpike road: " Provided also, that the share or proportion of such sum or sums " of money so to be advanced or borrowed affecting such succeeding " heirs of entail shall not exceed one year's free rent of the entailed " lands of such proprietor situated in each parish respectively " through which any such turnpike road or any part thereof shall " run, or on which such bridge or any part thereof shall be built, " and that the heir of entail in possession of such entailed estate " shall be obliged to keep down the interest of such sum or sums " of money so advanced or borrowed: Provided also, that it shall " not be lawful to the creditor or creditors in right of any such " debt to adjudge or otherwise evict the entailed estate for payment " thereof, or any part thereof, but it shall and may be competent " to such creditor or creditors to prosecute such remedy or " remedies against the rents thereof as are given and allowed by " the law of Scotland to heritable creditors:"

And whereas the obligations for such debts were incurred in reliance upon the continuance of a right to levy tolls, which right will be abolished after the commencement of this Act; and whereas it may happen that under the provisions of this Act the full amount of such debts for which such heirs of entail became liable may not be found included in the amount for which certificate of debt is under the preceding section directed to be granted to the creditor or creditors therein: Be it enacted, That the heirs of entail personally liable for payment of such debts, or for the portion thereof not included in such certificate, shall have all the like powers of charging the fee and rents of the entailed estate,

or any portion thereof other than the mansion house, offices, and policies thereof, with the full amount of such debts not included in such certificate, and of granting with the authority of the court of session bonds and dispositions in security for the full amount of such debts as aforesaid, as by the Act passed in the thirty-first and thirty-second years of the reign of Her present Majesty, chapter eighty-four, section eleven, are conferred with reference to entailers' debts: and such bonds and dispositions in security may be granted in favour of any parties in the right of such debts at the date when such bonds and dispositions in security are executed.

Provisions for Payment of Debt.

Payment of interest under the provisions of this Act.

62. The trustees shall annually investigate and determine what sum of money is requisite to pay the interest of the debts chargeable against the county for the current year, and shall impose and cause to be levied an assessment on all lands and heritages within the county at such a rate as shall be necessary to provide the aforesaid sum; and in like manner the local authority of any burgh shall impose and levy annually such an assessment as may be necessary to pay the interest of such debts as are under the provisions of this Act charges against the burgh.

Trustees and burgh local authority may resolve to pay off debt.

63. The trustees of any county may, at any general meeting after notice given by special advertisement of the intention to move such resolution, resolve, that the debts or any part thereof affecting the highways within such county, allocated and valued as herein-before provided, shall be paid and provided for; and the local authority of any burgh may, at any special meeting held for the purpose, after notice given by special advertisement *three weeks* previously thereto, resolve that the debts or any part thereof affecting the highways within such burgh, allocated and valued as herein-before provided, shall be paid and provided for.

Assessment for payment of debt.

64. After such resolution has been agreed to by the trustees of any county, such trustees shall impose and levy annually an assessment on the whole lands and heritages appearing on the valuation roll of such county; and after such resolution has been adopted by the local authority of any burgh, the said local authority shall impose and levy annually an assessment upon the whole lands and heritages appearing on the valuation roll of such burgh; and such assessment shall be imposed and levied in the county or burgh respectively at such rates as shall be sufficient to provide a sum equal to not less than one fiftieth part of the principal debt valued and allocated on such county or burgh respectively, and also the yearly interest on such debt, or the balance thereof

A.D. 1877.

from time to time remaining due, at a rate not exceeding five pounds per centum per annum.

All assessments for payment of debt, and for payment of interest on any debt, shall be paid by proprietors only.

Trustees and burgh local authority may borrow on security of assessments.

65. It shall be lawful for the trustees of any county, or the local authority of any burgh, respectively, to borrow on the security of the assessments for the payment of debts to be levied under this Act within their respective bounds, or on the security of any part thereof, all or any moneys required in such county or burgh for the purpose of paying off the whole or any of the debts as valued, or any part thereof, and such moneys may be borrowed at any rate of interest not exceeding *five pounds* per centum per annum; and such moneys may be borrowed under an assignation in security in the form contained in the Schedule (B.) No. 1. to this Act annexed or to the like effect, which shall be duly executed, if signed, in the case of moneys borrowed by the trustees, in the manner and by the person or persons herein-after appointed for the purpose, and in the case of money borrowed by the local authority of any burgh, by the provost or chief magistrate and clerk of the local authority of such burgh; and every such assignation in security shall be effectual for securing to the person advancing the sum of money in such deed expressed to be advanced, and to his heirs, executors, and assignees, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such assignation in security provided; and the said assignations in security shall be numbered in the order of succession in which they are granted, and shall be entered by the county road clerk or clerk of the burgh local authority, as the case may be, in a book to be called the register of "road debt securities," to be kept by them for that purpose; and every such assignation in security shall be validly transferred by an indorsation on such assignation in security, by the person entitled thereto for the time being, of a transfer in the form or as nearly as may be in the form of the Schedule (B.) No. 2. hereunto annexed; and the persons in right of such assignations in security shall be creditors upon the assessments thereby expressed to be assigned in security in an equal degree one with another, and shall not have any preference or priority other than is provided in such assignations in security under the powers of this Act.

Loans to be repaid out of assessments imposed

66. The trustees of any county, and the local authority of any burgh, by whom any such assignations in security as aforesaid shall have been granted shall annually make payment to the creditors

therein, out of the assessments coming into their hands for that purpose, of interest at a rate not exceeding five pounds per centum per annum on the sums contained in any such assignations in security, and also of such farther sums to account of the principal sums contained in such assignations in security as will extinguish the same within the currency of the assessments for extinction of debt to be levied under the powers of this Act; and the said trustees and local authority of any burgh shall, by agreement with the persons advancing any money as aforesaid, determine the order of priority in which the several sums advanced shall be respectively discharged; and the trustees of each county, and local authority of each burgh so borrowing any moneys, are hereby required to keep an exact and regular account of all receipts and payments in respect of principal moneys borrowed as aforesaid, and the interest thereof, in a book or books separate and apart from all other accounts.

under authority of Act.

Provision for protection of lenders on security of assessments.

67. No person lending any moneys as aforesaid, and taking an assignation in security for repayment thereof, executed in manner directed or allowed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act have been duly complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such assignation in security on the ground that such provisions have not been complied with.

Trustees and burgh local authority may pay off loans, and borrow money for that purpose.

68. It shall be in the power of the trustees of any county, or the local authority of any burgh, to require from any creditor, in a debt valued under the provisions of this Act, at any term of Whitsunday or Martinmas, on three months previous notice, an assignation or discharge of his debt valued and allocated as aforesaid, on payment to such creditor of the whole amount at which such debt has been valued, or of such balance thereof as may remain due; and in every case where any moneys shall have been borrowed under the powers of this Act, it shall be lawful for the trustees, or local authority by whom such moneys shall have been borrowed, to pay off the moneys so borrowed, and again to borrow the moneys necessary for that purpose, and also to repay the said last-mentioned moneys, and the interest thereof, under the powers of this Act, but so nevertheless that all moneys borrowed shall be repaid within a period not exceeding fifty years from the time when the assessment for the extinction of debt was first imposed by them under the provisions of this Act.

A.D. 1877.

Unclaimed instalments to be consigned.

69. In case any debt or interest due thereon shall remain in the hands of the trustees of any county, or local authority of any burgh, unclaimed by the persons entitled thereto for the period of three months after the term of Whitsunday or Martinmas at which the same respectively became payable, the trustees and local authority shall respectively be exonered and discharged in so far as respects such debt or interest by consignation thereof in the name of the several persons entitled thereto, so far as known to them, in any chartered or incorporated bank in Scotland.

Sums payable to persons under disability may be consigned.

70. Any sums payable under this Act to persons under disability may be consigned in bank in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in the case of moneys payable to persons under disability.

General Provisions as to Assessments.

Terms at which assessments shall be payable.

71. All assessments imposed under the authority of this Act shall be deemed and taken to be for the year from the *fifteenth day of May* preceding the date of imposing the same, and shall be imposed according to the valuation of the lands and heritages in the valuation roll in force for the year in which such assessment is imposed, and the same shall be made payable on or before a day to be fixed at the time of imposing the same, not earlier than the *first day of November* and not later than the *first day of January* then next ensuing.

Collection of assessments.

72. All assessments imposed by the trustees under the provisions of this Act may be levied and collected by the county road collector, or such other person or persons as the trustees may from time to time appoint; provided, that it shall be lawful for the trustees, if they shall see fit, to require the commissioners of supply of the county to collect the assessments upon lands and heritages imposed by the trustees under the provisions of this Act, and the commissioners of supply of the county shall cause all such assessments to be levied and collected, when required to do so by the trustees, who shall be liable for and pay the whole necessary expenses attending such collection.

Board to hear appeals.

73. All appeals by persons complaining that they have been improperly assessed in respect of any assessment imposed by the trustees under the provisions of this Act shall be heard and determined by the board; and the trustees when imposing any assessment shall fix a day, not being less than fourteen days preceding the day on which such assessment under this Act is made payable,

on or before which appeals by any persons complaining that they have been improperly assessed shall be lodged with the county road clerk, and another day, not less than fourteen days thereafter, on which such appeals shall be heard: Provided that notice of both such days shall be given upon or along with the notice of assessment: Provided also, that it shall be lawful for the board to relieve from assessment any occupiers of lands and heritages under the annual value of four pounds, as appearing on the valuation roll, on the ground of poverty.

Power to recover assessments imposed by trustees.

74. The whole powers and rights of issuing summary warrants and proceedings, and all remedies and provisions enacted for recovery of the land and assessed taxes, or either of them, and other public taxes shall be applicable to the assessments by this Act authorised to be imposed and levied, and sheriffs, magistrates, justices of the peace, and other judges may, on the application of the clerk or collector, grant warrant for the recovery of such assessments, in the like form and under the like penalties as is provided in regard to such land and assessed taxes and other public taxes: Provided, nevertheless, that it shall be competent to the trustees to prosecute for and recover such assessments by action in the sheriff small debt court, or in any other court, as the case may be, and that in any summons, complaint, or action for the recovery of such assessments more than six defenders may be cited and called, any law or practice to the contrary notwithstanding; and all assessments imposed in virtue of this Act shall, in the case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferred to all other debts of a private nature due by the parties assessed.

Appeals against and recovery of assessments in burgh.

75. The provisions for appeals against and recovery of police assessments in any burgh shall apply to appeals against and the recovery of assessments imposed under this Act by the local authority of such burgh.

Burgh may apply certain funds to maintenance of roads in lieu of assessments.

76. When in any burgh there shall be funds available, and which may be lawfully applied, for the maintenance and repair of highways therein, under the control of the local authority of any burgh, or for the payment of debt affecting any such highways, such local authority may apply such funds for such purposes in aid of the assessment authorised to be imposed by this Act; or otherwise, if such funds shall be sufficient for such purposes, the whole or such part thereof as may be necessary may be so applied, in place of making an assessment under the provisions of this Act.

A.D. 1877.

Special Provisions as to certain Bridges.

As to cost of maintaining, &c. certain bridges.

77. Whereas there are several bridges in Scotland which accommodate the traffic not only of the county or burgh, as the case may be, within which they are locally situated, but also of adjoining counties or burghs, and it is not reasonable that the whole cost of maintaining, repairing, and if need be, rebuilding such bridges should be imposed upon the county or burgh within which they are so situated: Be it enacted, that in respect of such bridges the following provisions shall have effect:

(1.) It shall be lawful for the county road clerk or clerk of supply of any county, or for the town clerk or clerk of any burgh to apply to the Secretary of State to determine that any bridge locally situated within a county or burgh in respect of its accommodating other traffic than that of such county or burgh only, shall be deemed to belong in common to the county or counties, and burgh or burghs, to be named in his determination:

2.) Upon such application being presented to the Secretary of State, he may, if he shall think fit, by any writing under his hand appoint any two persons as commissioners to institute a local inquiry as to the circumstances of the case, and after hearing all parties interested, to report thereon to the Secretary of State, and for the purposes of such inquiry the commissioners shall have power, after such public notice as they may think sufficient, to examine witnesses, and to call for such documents as they may consider necessary, and to do all such matters and things as may seem expedient to them for the purposes of the inquiry:

(3.) If the commissioners are of opinion that the Secretary of State should determine that the cost of maintaining, repairing and, if need be, rebuilding the bridge mentioned in the application should not be borne wholly by the county or burgh within which the same is locally situated, they shall prepare and transmit along with their report the draft of the determination which they recommend that the Secretary of State should make, setting forth therein the proportions in which such cost should be borne by the county or counties and burgh or burghs named in the determination:

(4.) The Secretary of State after such further inquiry, if any, as he shall deem necessary, may approve of the draft submitted with or without alterations, and any determination made

by him under his hand and seal, shall have the same effect as if it were contained in this Act: Provided always, that such determination shall be laid before both Houses of Parliament, and if either House of Parliament, within forty days after the same has been so laid before it, resolve that such determination ought not to take effect, the same shall be of no effect (without prejudice to the making of any new determination), but otherwise shall come into operation at the expiration of the said forty days, or any later date mentioned in the determination:

(5.) The Secretary of State may make orders as to the costs incurred in relation to any inquiry under this section, including the reasonable remuneration of the said commissioners, and as to the parties by whom such costs shall be paid, and the funds or assessments against which they shall be charged; and the Court of Session may interpone their authority to any order made by the Secretary of State as to such costs, and may grant decree conform thereto, upon which execution and diligence may proceed in common form.

Miscellaneous.

Authentication of documents relating to the execution of Act.

78. For the purposes of this Act, the signature of the chairman of the trustees or of the chairman of the board, or of the preses of any meeting of the trustees or of the board, or of the chairman or preses of any district committee to be appointed in terms of this Act, adhibited to any writing or document except as herein-after provided, shall be equivalent to the signatures of the whole trustees or members of the board, or of the whole members of such district committee present at a meeting thereof respectively; and the addition to such signature of the word "chairman" or "preses" shall be good primâ facie evidence that such signature is the signature of such chairman or preses, as the case may be, and that such writing or document is genuine and authentic.

Minutes of trustees, &c. to be receivable in evidence.

79. Any minute made of proceedings at meetings of the trustees, board, or district committee, if signed either at the meeting of the trustees, board, or district committee at which such proceedings took place, or at the next ensuing meeting of the trustees, board, or district committee by any person purporting for the time being to be the chairman or preses of such meeting, shall be receivable in evidence of such proceedings in all legal proceedings without further proof; and until the contrary is proved every meeting of the trustees, board, or district committee, where minutes have been so made of

A.D. 1877.

the proceedings shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified.

Actions now pending transferred to trustees under Act.

80. No action, prosecution, or other proceeding by or against the trustees or other persons acting before the commencement of this Act, under the authority of any general or local Act, in relation to the roads, highways, and bridges vested in the county road trustees or burgh local authority, as the case may be, under this Act, shall cease or be discontinued or be prejudicially affected by this Act, but the same shall continue and take effect both in favour of and against the said county road trustees or burgh local authority, as the case may be, under this Act, in the same manner in all respects as the same would have continued and taken effect in relation to the trustees or other persons under any of the said general or local Acts, if this Act had not been passed: Provided, that if any question shall arise as to whether any action, prosecution, or other proceeding should be carried on at the instance of or against the county road trustees or the burgh local authority, the same may be disposed of incidentally, and without any action of transference or other separate proceeding by the court or judge before whom such action, prosecution, or proceeding depends.

Former trustees to account for moneys and deliver up books.

81. All persons acting or who have acted under any of the general or local Acts in force at the commencement of this Act as trustees of any of the turnpike roads, statute labour roads, highways, or bridges within the county, or as clerks or officers of such trustees, who shall, at the commencement of this Act, have in their custody, power, or possession any moneys collected by virtue of such Acts, or any books, deeds, papers, writings, property, or effects belonging to the said turnpike or statute labour trusts respectively, or relating to the execution of such Acts, shall pay and deliver up the same to the county road trustees, or to such person as they shall appoint to receive the same, who shall hold them, and be liable to pay them over or make them forthcoming, subject to the provisions of this Act.

Books of former trustees to be evidence.

82. All books containing the accounts and proceedings of the trustees or other persons who have acted under any of such Acts shall and may be given in evidence in all claims, prosecutions, appeals, actions and proceedings whatsoever under this Act, in the same manner as they might have been used under the said Acts.

Trustees not to incur personal liability.

83. A trustee or member of a board, or district committee, by being party to or executing in his capacity as aforesaid any contract or other instrument, or otherwise executing any of the

powers under this Act, shall not be subject individually to any action, prosecution, or other legal proceeding; and the trustees may apply any moneys from time to time coming into their hands for the purpose of paying any expenses of legal proceedings, or any damages they may incur in the bonâ fide execution of the powers granted by this Act to them.

Trustees not to hold any office of profit or participate in profits of any contract.

84. If any trustee—

(1.) Holds any office or place of profit under this Act; or

(2.) Participates in the profits of any work done; or

(3.) Is concerned in or participates in the profit of any contract entered into under this Act;

Such person shall cease to be a trustee, and his office shall thereupon become vacant, subject to the exceptions following; that is to say,

(*a.*) A trustee shall not vacate his office by reason of his being a shareholder in any joint stock or incorporated company entering into any contract with or supplying any article by order of the trustees or any board or any district committee; and

(*b.*) A trustee shall not vacate his office by reason of his being interested in any sale, feu, or lease of any lands, or any loan of money to the trustees.

Nevertheless a trustee or member of a board, or district committee shall not be entitled to vote in respect of any contract with or any supply of articles by order of the trustees, board, or district committee, where such contract is entered into with or such articles are supplied by any company in which he is a shareholder, or in respect of any question connected therewith, or in respect of any such sale, feu, lease, or loan as herein-before mentioned; and if he does so vote his vote shall not be counted, and he shall incur for each time when he so voted a penalty not exceeding twenty pounds.

No person holding office to participate in profits of any contract.

85. No person holding any office under this Act shall directly or indirectly participate in the profits of any work done by order of, or be concerned in or participate in the profit of any contract entered into with, or any supply of articles made to the trustees, board, or any district committee, under the penalty of one hundred pounds; and it shall be in the option of the trustees, board, or district committee, and competent to them, to render any contract null and void, in the profit of which any such person has participated or may participate.

A.D. 1877.

Trustee may act as sheriff or justice.

86. No trustee shall be disqualified from acting as a sheriff or justice of the peace in the execution of this Act, by reason of his being such trustee.

Moneys to be lodged in bank.

87. All moneys received by or on behalf of the trustees or the board under the authority of this Act shall, on the receipt thereof, be paid by the person receiving the same into an account to be kept in name of the trustees or of the board with some incorporated or joint stock bank or branch thereof, to be for that purpose appointed by the board.

Cheques on bank account of trustees or board.

88. All cheques on the bank accounts kept by the trustees or board shall be signed by two members of the board and by the treasurer; and no cheques shall be drawn on such accounts for any other purpose than the payments which shall from time to time be authorised by the trustees or the board.

Cheques on bank account of district committee.

89. All sums passed by the trustees or the board to the account of any district committee for the management, maintenance, and repair of the highways within such district shall be respectively paid into an account to be kept in name of the district committee with an incorporated or joint stock bank or branch thereof to be appointed by the board, and all cheques on such account shall be signed by two members and the treasurer of the district committee.

Execution of bonds and other securities.

90. All bonds, mortgages, debentures, or other securities for money borrowed by the trustees, and all dispositions and conveyances of property belonging to the trustees, shall be signed by two of the trustees and by the clerk except where otherwise expressly provided; and the clerk shall keep a register of all bonds, mortgages, debentures, or other securities granted by the trustees under this Act and of the transfers thereof.

Mortgages to be personal estate.

91. All bonds, mortgages, debentures, or other securities granted under the authority of this Act, and all money advanced and lent on the security of any assessment leviable under this Act, shall be moveable or personal estate, and transmissible as such.

Application of moneys not otherwise appropriated.

92. All moneys received by the trustees on account of assessments or penalties, or otherwise, for the application of which no special provision is made in this Act, shall be applied as follows:

(1.) In payment of the salaries and allowance of officers and servants, and the general expenses of management of the trust:

(2.) In payment of the expense of maintaining, repairing, and improving the several highways:

(3.) In payment of interest on the debts affecting the highways, valued and allocated as herein-before provided, and thereafter towards payment of the principal of such debts.

Audit of accounts.

93. The accounts of the trustees shall be balanced annually on the *fifteenth day of May*, and shall be audited by an auditor appointed by the sheriff by any writing under his hand. The accounts as audited shall be laid before the next annual general meeting of the trustees.

Repeal of Acts.

94. From and after *the commencement of this Act* in any county, the Act passed in the eighth and ninth years of the reign of Her present Majesty, chapter forty-one, and the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, except the sections thereof incorporated herewith as after mentioned, shall cease to have effect therein; provided that nothing herein contained shall affect anything duly done or suffered, or any right or liability acquired, accrued, or incurred, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment contained in either of the last-mentioned Acts, or in any other Act which, from and after *the commencement of this Act* in any county, shall cease to have effect therein: Provided also, that until the *fifteenth day of May* following the commencement of this Act in any county all provisions for levying, collecting, and recovering toll duties, statute labour conversion money, bridge money, causeway mail, and other moneys of whatever kind, for managing, maintaining, and repairing roads, bridges, and highways situated or partly situated in such county or in any burgh therein, and also all provisions against persons evading or attempting to evade payment of such toll duties and other moneys, shall continue in full force and effect, and may be put in operation by the trustees or burgh local authority under this Act, as the case may be, in the same manner as they might have been put in operation by the trustees under the other Acts mentioned in this section.

Incorporation of parts of General Turnpike Act.

95. The following sections of the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, viz., sections eighty, eighty-one, eighty-three, eighty-four, eighty-five, sections eighty-seven to ninety-two, both inclusive, section ninety-four, and sections ninety-six to one hundred and eight, both inclusive, in so far as the same are not inconsistent herewith, shall be and are hereby incorporated with this Act, and, from and after the *commencement of this Act* in any county, shall extend and apply to all the highways made or to be made within the same;

A.D. 1877.

and in the construction of the said Act, with reference to this Act, the expression "trustees under any Turnpike Act," or words having the like import, and the expression "turnpike roads" shall mean and apply to the trustees under this Act, and the roads, highways, and bridges placed under their management by this Act, as the case may require, in so far as such application shall not be excluded by the context or any of the provisions of this Act: Provided, that it shall not be lawful for the trustees, or any one authorised by them, under the powers conferred by the eightieth section of the recited Act, to carry away any materials to be used by them for any purpose whatsoever, to a greater distance than four miles from the place where such materials have been obtained, unless satisfaction shall be made for the same in the manner provided in said section in the case of stones to be used for building.

Recovery and application of penalties.

96. All penalties under this Act may be recovered, together with the expenses of process, at the instance of the procurator fiscal, or of the clerk of the trustees, or of the clerk of the burgh local authority, as the case may be, before the sheriff or any two justices of the peace of the county, in which the same shall have been incurred, under the provisions of the Summary Procedure Act, 1864; and all the jurisdictions, powers, and authorities necessary for this purpose are hereby conferred on sheriffs and justices of the peace.

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the trustees or of the burgh local authority, as the sheriff or justices of the peace shall direct.

Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff or justices of the peace.

Every person found liable in any penalty recoverable summarily under this Act shall, failing immediate payment thereof and expenses, be liable to be imprisoned for a term not exceeding *sixty* days; and the conviction and warrant may be in the form No. 3 of Schedule K. of the Summary Procedure Act, 1864.

A.D. 1877.

SCHEDULES.

SCHEDULE (A.) No. 1.

I [*A.B., chairman of the county road trustees of the county of , or provost or chief magistrate of the burgh of* , as the case may be], in terms of "The Roads and Bridges (Scotland) Act, 1877," certify that [*name and designation of creditor*] is a creditor in turnpike road debt [*or* statute labour debt, *or, as the case may be*] in respect of moneys lent to or for behoof of [*specify the particular trust in the case of turnpike debt, and the district or parish in the case of statute labour debt*], valued at the sum of , and which has been allocated on the county of [*or* burgh of , *as the case may be*], all in terms of the provisions of the said Act.

Witness my hand, this day of 18 .

(Signed) *A.B.*

SCHEDULE (A.) No. 2.

I [*name and designation of cedent*] transfer to [*name and designation of assignee*], his heirs, executors, and assignees my whole right and interest under this certificate.

[*To be signed and dated by the cedent.*]

SCHEDULE (B.) No. 1.

By virtue of "The Roads and Bridges (Scotland) Act, 1877," we, two of the county road trustees of the county of , and the clerk of the said trustees, acting under the said Act, as representing the said trustees [*or* the provost, *or* chief magistrate, *as the case may be*, and clerk of the local authority of the burgh of , acting under the said Act, as representing the local authority of the said burgh,] grant us to have borrowed and received from [*name and designation of lender*] the sum of pounds for the payment of valued road debt allocated on the county of [*or* burgh of *as the case may be*] under the provisions of the said Act. In consideration whereof we assign

A.D. 1877.

to the said [*name of lender*], his heirs, executors, and assignees, all the assessments to be raised and paid within the said county [*or* within the said burgh, *as the case may be*] for the payment and extinction of debt under the provisions of the said Act, in security of the repayment of the said sum of pounds, and of the interest thereof after the rate of pounds per centum per annum from the day of until payment, which sum is to be repayable, with the interest at the rate foresaid, as follows; [*state the terms of repayment according to the arrangement*]. And we consent to registration. In witness whereof [*insert testing clause in common form*].

SCHEDULE (B.) No. 2.

I [*name and designation*], in consideration of the sum of pounds, transfer to [*name and designation*], and his heirs, executors, and assignees, an assignation in security, numbered [*insert the number of the assignation*], and dated [*insert date*], granted by the trustees of the county of acting under "The Roads and Bridges (Scotland) Act, 1877," [*or* by the local authority of the burgh of , *as the case may be*], for [*insert the stipulated annual payment and duration thereof*], from the day of . And I consent to registration. In witness whereof [*insert testing clause in common form*].

(Scotland).

A

BILL

To alter and amend the Law in regard to the Maintenance and Management of Roads and Bridges in Scotland.

(Prepared and brought in by The Lord Advocate and Mr. Secretary Cross.)

Ordered, by The House of Commons, *to be Printed*, 12 *February* 1877.

[Bill 65.]

Under 7 oz.

Roads and Bridges (Scotland) Bill.

[AS AMENDED IN COMMITTEE.]

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title, and commencement of Act.
2. Extent of Act.
3. Interpretation.

Continuance of existing Local Acts.

4. Existing local Acts to continue to 1st November 1887 and end of next session of Parliament.
5. Certain local Acts made perpetual.

Adoption of the Act.

6. How Act may be adopted in counties.
7. Provision for case of one county adopting and another county not adopting Act.
8. Act may be adopted subject to provisional agreement between county and burgh. Confirmation by Secretary of State.
9. After two years, power to apply to Secretary of State for provisional order to be confirmed by Parliament.
10. Costs to be awarded in certain cases.

Road Authorities in Counties and Burghs.

11. Management and maintenance of highways in counties to be in county road trustees, and in burghs in burgh local authority.

Appointment of County Road Trustees, Board, and Committees.

12. Appointment of county road trustees.
13. Mode of election by ratepayers.
14. Trustees designated and incorporated.
15. Appointment of county road board.
16. County to be divided into districts, and district committees appointed.

Clause.
17. Appeal to Secretary of State as to formation of districts.
18. Islands to be districts.
19. Occasional vacancies to be supplied.
20. Failure to elect not to invalidate acts of trustees.

Meetings of Trustees, Board, and Committee.

21. Time and place of general meetings of the trustees.
22. Meetings of board and district committees.
23. Quorum at meetings of trustees, board, and committee.

General Regulations for conducting the Business of Meetings.

24. Regulations as to meetings and proceedings of trustees, board, and district committees.
25. Chairman to be elected, in absence of ordinary chairman.
26. District committees and board to make reports.
27. Appeal from decision of district committee.

Appointment of Officers.

28. Appointment of county officers.
29. Appointment of district officers.
30. Salaries of county road officials. Allocation of general expenditure.
31. Former officers to continue till removed.

General Management in Counties and Burghs.

32. Consolidation of trusts.
33. Abolition of tolls, statute labour, causeway mail, &c.
34. Application of tolls and statute labour money at present leviable.
35. Trustees to purchase pontages, &c.
36. Roads (formerly turnpike) not wholly situated in one county or burgh.
37. Bridge (not formerly turnpike) not wholly situated in one county or burgh.
38. Detached parts of counties to form part of the county by which they are surrounded.
39. List of highways to be made up. Alteration of list.
40. Highways may cease to be such, and other roads may become highways.

Clause.
41. A highway ceasing to be a highway may be shut up.
42. Toll-houses to be first offered to adjoining proprietors.
43. Provision for footpaths.
44. Boundaries of burghs.
45. Local authority to have management of roads within burghs.

Maintenance and Repair of Highways and Assessments therefor.
46. Report on condition of highways, and estimate cost of maintenance.
47. Board to meet and consider reports.
48. Roads or highways may be shut up for repairs.
49. Assessments in counties for management, maintenance, and repair.
50. Maintenance of bridges in two districts.
51. Assessment in burghs for maintenance and repair.
52. Former modes of assessment may be retained in certain burghs.

Contracts by Road Authorities.
53. Power for road authorities to make contracts in respect of repair of roads, highways, or bridges.

Extraordinary Traffic.
54. Power of road authority to recover expenses of extraordinary traffic.

Construction of new Roads and Bridges.
55. New roads and bridges may be constructed by the Board, and assessed for upon proprietors.

Valuation and Allocation of Debt.
56. Appointment of Debt Commissioners.
57. Clerks of trusts to make out list of debts.
58. Intimation to creditors.
59. Revised list of debts to be made up.
60. Revised list to be open to inspection.
61. Debts affecting counties and burghs may be compromised.
62. Valuation of debts.
63. Allocation of debts on roads in two or more counties.
64. Allocation of debts between landward parts of counties and burghs.

Clause.

65. Debts to be charged against counties and burghs, and to bear interest. Certificates of debt to be granted.
66. Extinction of debts not charged in terms of Act.
67. Certain road debts may be charged on entailed estates by bond and disposition in security.

Provisions for Payment of Debt.

68. Payment of interest under the provisions of this Act.
69. Trustees and burgh local authority to resolve to pay off debt.
70. Payment and discharge of debts.
71. Assessment for payment of debt.
72. Trustees and burgh local authority may borrow on security of assessments.
73. Loans to be repaid out of assessments imposed under authority of Act.
74. Provision for protection of lenders on security of assessments.
75. Trustees and burgh local authority may pay off loans, and borrow money for that purpose.
76. Unclaimed instalments to be consigned.
77. Sums payable to persons under disability may be consigned.
78. Saving as to loan to Mull district of Argyllshire.

General Provisions as to Assessments.

79. Terms at which assessments shall be payable.
80. Collection of assessments.
81. Board to hear appeals.
82. Power to recover assessments imposed by trustees.
83. Assessments in burgh, how to be levied and recovered.
84. Burgh may apply certain funds to maintenance of roads in lieu of assessments.

Special Provisions as to certain Bridges.

85. As to cost of maintaining, &c. certain bridges.

Special Provisions as to Highways partly in England.

86. As to cost of maintaining, &c. highways partly in England.

Miscellaneous.

87. Authentication of documents relating to the execution of Act.
88. Minutes of trustees, &c. to be receivable in evidence.

Clause.

89. Actions now pending transferred to trustees under Act.
90. Former trustees to account for moneys and deliver up books.
91. Books of former trustees to be evidence.
92. Trustees not to incur personal liability.
93. Trustees not to hold any office of profit or participate in profits of any contract.
94. No person holding office to participate in profits of any contract.
95. Trustee may act as sheriff or justice.
96. Moneys to be lodged in bank.
97. Cheques on bank account of trustees or board.
98. Cheques on bank account of district committee.
99. Execution of bonds and other securities.
100. Mortgages to be personal estate.
101. Application of moneys not otherwise appropriated.
102. Audit of accounts.
103. Annual reports.
104. Repeal of Acts.
105. Incorporation of parts of General Turnpike Act.
106. Recovery and application of penalties.

Schedules.

A

B I L L

[AS AMENDED IN COMMITTEE]

TO

Alter and amend the Law in regard to the Maintenance and Management of Roads and Bridges in Scotland. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and commencement of Act.

1. This Act may be cited for all purposes as "The Roads and Bridges (Scotland) Act, 1877," and, except in so far as otherwise expressly provided, it shall commence and take effect in each county (including the burghs wholly or partly within the same) from the date of its adoption therein, as herein-after provided for.

Extent of Act.

2. This Act shall apply to Scotland only, except in so far as otherwise expressly provided.

Interpretation.

3. In this Act the following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction:

"The Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State:

"Sheriff" shall include sheriff-substitute:

"The trustees" shall mean the county road trustees appointed and acting under this Act:

"The board" shall mean the county road board appointed and acting under this Act:

"The district committee" shall mean the district road committee appointed and acting in any district under this Act:

"Clerk," "treasurer," "collector," and "surveyor," shall respectively mean the county road clerk, the county road treasurer, the county road collector, and the county road surveyor, appointed and acting for the time being under this Act:

"County" shall mean (except where otherwise expressly provided) the county exclusive of any burgh wholly or partly situated therein, but shall not include a county of a city.

A.D. 1877.

"Burgh" shall mean and include royal burgh, parliamentary burgh, and any populous place the boundaries whereof have been fixed and ascertained under the provisions of the General Police and Improvement, Scotland, Act, 1862, or of the Act first therein recited, or have been determined by or under any local Act, provided that the population of such populous place, according to the census last taken previously to this Act commencing to have effect therein, exceeds five thousand:

"Police burgh" shall mean every such populous place, the population of which, according to such census, does not exceed five thousand:

"Burgh local authority" or "local authority of any burgh" shall mean the town council, commissioners of police, or other local authority having the management and control of the streets, and the power to levy assessments in respect thereof, in any burgh, under or in virtue of any general or local Act or of this Act:

"Parish" shall include united parish, but it shall be exclusive of any burgh or police burgh wholly or partly situated therein:

"Turnpike road" shall include all roads and bridges forming part of any turnpike road trust and all bridges under the management of any separate bridge trust:

"Statute labour road" shall include all roads and bridges maintained by statute labour or by moneys raised as the conversion or in lieu thereof, or by bridge money:

"Highway" shall mean and include all existing turnpike roads, all existing statute labour roads, all roads maintained under the provisions of "The Highland Roads and Bridges Act, 1862," and all bridges forming part of any highway, and all other roads when declared to be highways under the provisions of this Act, all public streets and roads within any burgh or police burgh not at the commencement of this Act vested in the local authority thereof, but shall not include any street or road so vested, or any street or road or bridge which any person is at the commencement of this Act bound to maintain at his own expense:

"Bridge" shall include the accesses thereof:

"Tolls" shall include pontages:

"Causeway-mail" shall include through customs and all exactions of whatever kind, other than tolls or assessments, made or which may be made in respect of the use of or passage over the streets or roads within any burgh, but shall not include petty customs except in so far as they are exacted in respect of goods, articles, things, or animals passing or carried through such burgh:

"Proprietor" and "lands and heritages" shall have the same meanings as are attached thereto respectively in the Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act for the valuation of lands and heritages in Scotland;" and the expression "the valuation roll" shall mean the valuation roll in force for the time in any county or burgh, as the case may be, made up under the authority of the said Act, or any other Act relating to the valuation of lands and heritages in Scotland:

"Person" shall include corporation, commissioners, or trustees:

"Ratepayer" shall mean any person (not being a commissioner of supply) being of full age and not subject to any legal incapacity, whose name appears as proprietor, tenant, or occupier of lands and heritages entered on the valuation roll for the county as of the annual value of four pounds and upwards, or as joint proprietor, tenant, or occupier of lands and heritages entered on such roll of an annual value which, when divided by the number of such joint proprietors, tenants, or occupiers, yields a quotient of four pounds and upwards:

"Debt Commissioner" shall mean a Debt Commissioner appointed for the purposes of this Act:

"Local newspaper" shall mean any newspaper published in the county or burgh as the case may be, or, if there be no newspaper published therein, any newspaper published in a county or burgh adjoining thereto:

Where in this Act notice is required to be given by "special advertisement," such notice shall be published once in at least two local newspapers.

Continuance of existing Local Acts.

Existing local Acts to continue to 1st Nov. 1887 and end of next session of Parliament.

4. All local Acts now in force for regulating, managing, making, maintaining, or repairing any turnpike road or statute labour road, or other highway situated or partly situated in any county (including the burghs wholly or partly within the same) in which tolls and statute labour, or either thereof, have not been abolished, shall continue in force until the first day of November one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless in the meantime Parliament otherwise provides, or this Act shall be adopted, or tolls or statute labour shall be legally abolished, in such county.

From and after the time at which any such Act or Acts shall cease to be in force in any county (including as aforesaid), this Act

A.D. 1877.

shall, unless Parliament otherwise provides, commence to have effect therein.

Where any Act relates to a turnpike road which is situated in more than one county, notwithstanding that such Act has ceased, in terms of this Act, to be in force in one county in which such road is situated, it may nevertheless continue to be in force in the other county or counties in which such road is situated.

For the purposes of this Act "The Highland Roads and Bridges Act, 1862," shall be deemed and taken to be a local Act, except in so far as it relates to piers and quays.

Certain local Acts made perpetual.

5. Where any local Act in force in a county in which tolls and statute labour have been abolished is limited as to its endurance, such Act, subject to the provisions of this Act, shall be and is hereby made perpetual.

Adoption of the Act.

How Act may be adopted in counties.

6. The following provisions shall have effect with regard to the adoption of this Act:

(1.) Case of counties which have obtained Private Acts.

(1.) In those counties in which tolls and statute labour have been abolished, or are not exigible, or power has been obtained to abolish them, or to arrange for their abolition, this Act may be adopted in place of the local Act or Acts relating to roads, highways, and bridges therein in force in such county, on a resolution to that effect agreed to by not less than two thirds of the trustees under such Act or Acts present and voting at a meeting of the whole trustees of the county called by special advertisement on not less than thirty days notice, for the purpose of considering as to the adoption hereof; and the convener of any such county as aforesaid, on a requisition to that effect, signed by any six of the said trustees, being presented to him, shall call a meeting of the said trustees, with a view to consider a resolution in favour of the adoption of this Act, and in the event of such resolution not being carried by the requisite majority as aforesaid, it shall not be lawful to call another meeting with a view to the adoption of this Act for one year thereafter.

Upon the adoption of this Act in any such county any local Act or Acts in force therein shall stand repealed.

(2.) Case of counties which have not obtained Private Acts.

(2.) In any other county this Act may be adopted on a resolution to that effect agreed to by not less than two thirds of the commissioners of supply of such county present and voting at a meeting called by special advertisement for

the purpose on not less than thirty days notice; and the convener of any such county as aforesaid, on a requisition to that effect, signed by any six of the commissioners of supply of such county, being presented to him, shall call a meeting of the commissioners of supply, with a view to consider a resolution in favour of the adoption of this Act; and in the event of such resolution not being carried by the requisite majority at such meeting as aforesaid, it shall not be lawful to call another meeting with a view to the adoption of this Act for one year thereafter:

Upon the adoption of this Act in any such county any local Act or Acts in force therein relating to roads, highways, and bridges, shall stand repealed.

Provision for case of one county adopting and another county not adopting Act.

7. Where it shall happen that this Act has been adopted in any county, but has not been adopted in the county or counties adjoining thereto, any obligation, right, privilege, or duty, in regard to the debt affecting turnpike roads or bridges partly situated in two or more counties, which, had this Act been adopted in the latter county or counties would have fallen upon or belonged to the county road trustees thereof, shall fall upon or belong to the commissioners of supply thereof, and in so far as consisting of or resulting in payments of money, such payments shall be a good charge upon and be defrayed out of the county general assessment of such county or counties: Provided always, that as soon as this Act shall have been adopted in such county or counties, the obligation, right, privilege, or duty before mentioned shall be transferred from the said commissioners of supply to the county road trustees of the said county or counties: Provided that, where necessary for giving effect to the provisions contained in this section, "county road trustees" or "trustees" shall be held to mean and include commissioners of supply; and "county road clerk" shall be held to mean and include clerk of supply.

Wherever in terms of this section any obligation in regard to the debt affecting a turnpike road or bridge falls upon the commissioners of supply of a county, the trustees of such road or bridge shall, after providing for the expense of managing and maintaining the same, pay over to such commissioners of supply the surplus of income accruing to them from the tolls exacted on such road or bridge; and the said trustees shall not be entitled to reduce the tolls exacted thereon without the consent of such commissioners of supply.

Act may be adopted subject to provisional

8. It shall be lawful for the commissioners of supply of any county, on a resolution to that effect agreed to by not less than two thirds of the commissioners present and voting at a meeting called

A.D. 1877.

agreement between county and burgh. Confirmation by Secretary of State.

by special advertisement on not less than thirty days notice, to resolve to adopt this Act, subject to the stipulations contained in a provisional agreement entered into between them and the local authority of any burgh or burghs situated wholly or partly within such county, and signed by the convener and clerk of supply of such county, and by the provost or chief magistrate and town clerk or clerk of such burgh or burghs, as duly authorised in that behalf, in regard to the debts affecting and the cost and manner of managing and maintaining any road or roads or any bridge or bridges within or in the neighbourhood of such burgh or burghs; but in the event of a resolution being passed, subject to such stipulations, such resolution and agreement shall not take effect until the same shall have been approved of by the Secretary of State, after such inquiry as to him shall seem proper. Such approval may be signified under the hand and seal of office of such Secretary of State, and the writing signifying the same shall set forth a date, not being earlier than the first day of June then next ensuing, from and after which such approval shall take effect. From and after the date set forth in such writing, the provisional agreement shall become a final agreement, and after being recorded in the books of council and session shall have the same effect as if it were herein contained, and the provisions of this Act shall be read and construed subject to the stipulations of such agreement.

After two years power to apply to Secretary of State for provisional order to be confirmed by Parliament.

9. At the expiration of two years after the passing of this Act, if the Act shall not have been adopted in any county, it shall be lawful for the commissioners of supply thereof to apply to the Secretary of State to make a provisional order that the Act shall, from a date to be therein named, not being earlier than the first day of June then next ensuing, come into force in such county, subject to conditions contained in such order in regard to the debts affecting and the cost and manner of managing and maintaining any road or roads or any bridge or bridges in the neighbourhood of any burgh within or partly within such county.

Upon the receipt of any such application, such Secretary of State shall cause notice thereof to be given to the clerk of any burgh and to any other person, body, or corporation who shall appear to be affected thereby, and shall direct a local inquiry to be held in respect of the matters mentioned in the petition, after giving fourteen days notice of the time, place, and subject of the inquiry.

After receiving the report made upon such inquiry, such Secretary of State may issue a provisional order under his hand and seal of office in relation to the matters mentioned in the application,

either in accordance with the prayer thereof, or with such modifications or alterations as may appear to him to be requisite.

A provisional order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament; and it shall be lawful for such Secretary of State as soon as conveniently may be to obtain such confirmation; and the Act confirming such provisional order shall be deemed to be a public general Act of Parliament, and is hereafter referred to as the confirming Act. From and after the passing of such confirming Act, this Act shall commence to have effect in such county as if it had been adopted therein as herein-before provided, but subject to the provisions of the confirming Act, which shall have effect as if they were herein contained.

It shall be lawful for such Secretary of State to make such order as he thinks fit in reference to the reasonable costs, charges, and expenses properly incurred in opposing such provisional order.

All costs, charges, and expenses incurred by such Secretary of State in relation to any provisional order under this Act, to such amount as such Secretary of State thinks proper to direct, and all costs, charges, and expenses of promoting or opposing such provisional order, but not including the costs incurred in promoting or opposing any bill confirming such order before a committee of either House of Parliament as after mentioned, to such amount as may be allowed by such Secretary of State, shall be a charge against the county road trustees if a confirming Act is obtained as aforesaid, and shall be a charge against the county general assessment if such Act is not obtained, and shall be paid accordingly to such Secretary of State and to such opponents respectively, in such manner and at such times, and either in one sum or by instalments, as such Secretary of State may order, with power to such Secretary of State to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as such Secretary of State may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

The Court of Session may, on the application of the Lord Advocate on behalf of such Secretary of State, or on the application of any person interested, interpone their authority to any order made by such Secretary of State under this section, and grant decree conform thereto, upon which execution and diligence may proceed in common form.

Costs to be awarded in certain cases.

10. When any bill for confirming a provisional order under the preceding section is referred to a committee of either House of Parliament upon the petition of any person opposing such bill,

A.D. 1877.

the committee shall take into consideration the circumstances under which such opposition was made to the bill, and whether such opposition was or was not justified by such circumstances, and may award costs accordingly, to be paid by the promoters or the opponents to the bill, as the committee may think just; and the committee shall find and determine against what funds or persons such costs shall be chargeable.

Any costs under this section may be taxed and recovered under the Act passed in the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

Road Authorities in Counties and Burghs.

Management and maintenance of highways in counties to be in county road trustees, and in burghs in burgh local authority.

11. From and after the commencement of this Act in each county the management and maintenance of the roads, highways, and bridges within the county shall, as herein-after particularly provided, be vested in and incumbent on the county road trustees herein-after mentioned, and the management and maintenance of the highways and bridges within each burgh situated in or partly situated in such county shall be vested in and incumbent on the burgh local authority as herein-before defined.

Appointment of County Road Trustees, Board, and Committees.

Appointment of county road trustees.

12. From and after the commencement of this Act the following persons shall be the "County Road Trustees;" viz.,

(1.) All persons being commissioners of supply of the county, whose names appear as such on the list of commissioners of supply of the county for the time being in force made up under the Act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter ninety-three, and the Act passed in the twentieth year of said reign, chapter eleven (a certified copy of which list the clerk of supply shall deliver free of charge to the county road clerk, as soon as the latter is appointed, and thereafter in the month of December in each year) but subject to the provision that no factor whose name appears on such list shall be entitled to act or vote, except in the absence of the proprietor:

(2.) One person appointed at pleasure by and under the seal of every corporation or incorporated company assessed for the purposes of this Act upon an annual valuation of eight hundred pounds or upwards, as appearing from the valuation roll of the county:

(3.) One person (herein-after called an elected trustee), to be elected once in every three years, as herein-after provided, by the ratepayers under this Act from among their own number, in each parish wholly or partly situated in the county:

(4.) One person (who shall be deemed to be an elected trustee) appointed from time to time from among their own number by the commissioners of police of any police burgh as herein-before defined, within or partly within the county:

Provided, that where the management and maintenance of the highways within any burgh shall have been, as herein-after provided, transferred to the county road trustees, the provost or chief magistrate and one member of the town council of any royal or parliamentary burgh, and the provost or chief magistrate and one of the commissioners of police of any other burgh shall be county road trustees under this Act, and shall be deemed to be elected trustees.

Mode of election by ratepayers.

13. Within six weeks after the commencement of this Act, the ratepayers of each parish within the county entitled to elect a trustee for the purposes of this Act shall meet, and elect by open vote one person of their own number to be such trustee, who shall continue in office for the three years succeeding such election or until his successor shall be appointed, and the convener of the county shall call the meeting for such election on not less than ten days notice given by special advertisement; and once in every three years thereafter the said ratepayers shall meet for the same purpose, and shall on the like notice be called and convened by the county road clerk; and at every such subsequent meeting one person as aforesaid shall be elected as a trustee for the purposes of this Act for the three years succeeding his election, or until his successor shall be appointed: Provided that the chairman of any such meeting shall immediately transmit to the convener of the county in the case of the first election under this Act, and at subsequent elections to the county road clerk a certificate under his hand, setting forth the name and designation of the person elected, and such certificate shall be sufficient evidence of his election.

The ratepayer present having the largest valuation in the parish, as appearing from the valuation roll, shall be entitled to take the chair at any meeting for the election of a trustee; and the valuation roll, which the inspector of poor of the parish shall be bound to produce at any such meeting, shall be evidence of the right of any ratepayer whose name appears therein

A.D. 1877.

to vote at such meeting: Provided that no commissioner of supply shall be entitled to vote at such meeting, and that no person shall be entitled to vote thereat in respect of any lands and heritages within a burgh or police burgh wholly or partly situated in such parish.

Trustees designated and incorporated.

14. The trustees shall be a body corporate, under the name of the County Road Trustees of the county, as the case may be, and under that name they may sue and be sued, purchase, take, hold, and dispose of lands and other property for the purposes and subject to the provisions of this Act.

Appointment of county road board.

15. The trustees shall at their first general meeting hereinafter mentioned, and thereafter at each annual general meeting, appoint the "county road board," consisting of not more than thirty of the trustees, and not less than one third and not more than one half of the board shall be elected trustees, and the chairman of the trustees shall be over and above ex officio a member of the board and chairman thereof; and the board shall have and may exercise all the powers, rights, and privileges conferred on the trustees by this Act, except the power of making an assessment, or in so far as the trustees shall otherwise expressly provide, but shall be subject in all respects to any requisitions, orders, regulations, or instructions which may from time to time be issued by the trustees.

County to be divided into districts, and district committees appointed.

16. The trustees shall divide the county into districts for the purpose of managing the highways under their control, and for any other purposes under this Act, and shall define the limits and boundaries of such districts, and may from time to time alter such limits and boundaries, and they shall annually appoint for each district such of the trustees as they think fit to be a district committee (of whom one, being, except as herein-after otherwise expressly provided, a member of the county road board, shall be declared to be chairman); and not less than one third and not more than one half of the district committee so appointed shall consist of elected trustees representing parishes or burghs or police burghs within the district, as herein-before provided. The enactments contained in this section shall not be imperative in the case of a county containing fewer than six parishes, or in the case of a county in which at the commencement of this Act tolls and statute labour have been abolished or are not exigible, but no provision has been made that such county shall be divided into districts for the purposes of the local Act or Acts in force therein.

A.D. 1877.

Appeal to Secretary of State as to formation of districts.

17. Any commissioner or commissioners of supply, qualified as such in respect of lands and heritages of an annual value (as appearing in the valuation roll) not less than one fourth of the total annual value (so appearing) of the lands and heritages in any such district, may appeal against any such division, definition, or alteration to the Secretary of State, who shall have power, by a writing under his hand and seal of office, which shall be published in the Edinburgh Gazette, and recorded in the Sheriff Court books of the county, after such inquiry as to him shall seem proper, to alter and define the limits and boundaries of the districts into which the county shall be divided, as he may consider expedient; and any such alteration and definition or determination by the Secretary of State shall remain in force for ten years, and thereafter until the trustees, or some commissioner or commissioners of supply, qualified as such in respect of lands and heritages of an annual value (appearing as aforesaid) not less than one fourth of the total annual value (so appearing) of the lands and heritages in any existing district, apply to the Secretary of State for an alteration thereof, which he shall have power to make in manner aforesaid.

Islands to be districts.

18. Provided always, that in every case where at the passing of this Act any island or group of islands or part of an island forms or is treated as a separate district as respects the management of roads and highways, such district shall in all time after the commencement of this Act in the county of which such district forms part continue to form a separate district for the purposes of this Act; and the roads and highways in such district shall, after such commencement, be maintained and managed by a district committee, to be appointed by the county road board of such county, and consisting as far as may be of persons deriving their qualification as trustees from lands situated within such district, and such board shall nominate one of the members of such district committee, although not a member of the board, to be chairman of the district committee; and all assessments levied under the powers of this Act within such district for the management, maintenance, and repair of highways shall be expended in carrying into effect those purposes of this Act within such district, and in payment of a reasonable share of the necessary general expenditure incurred in such county in the execution of this Act and not otherwise, and no part of such assessment, levied within the remaining parts of such county shall be expended for the management, maintenance, and repair of highways within such district.

A.D. 1877.

Occasional vacancies to be supplied.

19. If any trustee or member of the board or of a district committee, or the chairman of a district committee, shall resign (which he may do by any writing under his hand, addressed to the chairman of the trustees) or shall refuse to act, or shall die, or become disqualified, the board, if they think fit, may appoint a person, being a commissioner of supply or an elected trustee, as the case may be, and subject to the provisions herein-before contained as to the constitution of the board and the district committees respectively, to supply his place, and the person so appointed shall remain in office only so long as the person in whose room he was appointed might have held office.

Failure to elect not to invalidate acts of trustees.

20. If the town council of any royal or parliamentary burgh, or the commissioners of police of any other burgh or of any police burgh, or the ratepayers of any parish, or any corporation or incorporated company as herein-before mentioned, shall fail to elect or appoint a person to be a trustee for the purposes of this Act, or if any person elected by such town council or commissioners of police or ratepayers, or appointed by such corporation or incorporated company, to be a trustee, or any other trustee, shall refuse to act, or shall resign, die, or become disqualified, the acts and proceedings of the remaining trustees, whether acting as trustees or as members of the board or of a district committee, as herein-after provided, shall nevertheless be deemed to be the acts and proceedings of the trustees, board, or district committee, as the case may be, and shall be as valid and effectual as they would have been if such failure, refusal, resignation, death, or disqualification had not occurred.

Meetings of Trustees, Board, and Committee.

Time and place of general meetings of the trustees.

21. The first general meeting of the trustees shall be called by the convener of the county by special advertisement, and shall be held not later than three months after the commencement of this Act, at such time and place as the said convener shall appoint, and another general meeting of the said trustees shall be held on the thirtieth day of April immediately following or on such other day as may be resolved on at the first general meeting of the trustees, and at such place as the said trustees may appoint; and thereafter an annual general meeting of the trustees shall be held on the twenty-ninth day of September in each year, or on such other day as may be resolved on at any general meeting of the trustees, and at such place as the trustees may from time to time appoint; and at the said first general meeting, and at every annual general meeting, the trustees present shall elect one of their own number to be

chairman of the trustees, and in the event of an equal number of votes being given for two candidates, the candidate having or representing the largest valuation in the county, as appearing on the valuation roll, shall be held to be elected; and such chairman shall hold office until the annual general meeting succeeding his appointment, or until his successor is appointed, and may be re-elected on the expiration of his first or other period of office; and the chairman shall, when present, preside at all meetings of the trustees.

Meetings of board and district committees.

22. The time and place of the first meeting of the board shall be fixed by the trustees, and the time and place of any subsequent meeting may be fixed by the board itself; and the time and place of the first and subsequent meetings of each district committee shall be fixed by the board, without prejudice to the right of adjournment or of holding special meetings herein-after provided.

Quorum at meetings of trustees, board, and committee.

23. The trustees shall at their first meeting determine what number of trustees shall be requisite to constitute a quorum at meetings of the trustees and of the board, and of the several district committees, respectively; and it shall be in the power of the trustees to alter such quorum from time to time as they may think fit; but no such alteration shall take effect until after the expiration of three months from the date of its being made and, in the case of a district committee, of its being communicated in writing by the county road clerk to the chairman thereof.

General Regulations for conducting the Business of Meetings.

Regulations as to meetings and proceedings of trustees, board, and district committees.

24. The following provisions shall be applicable to the meetings and proceedings of the trustees, the board, and the district committees respectively:

(1.) Special meetings of the trustees or of the board may be called by the chairman, or in the event of his illness, death, resignation, or absence from the county, by the clerk, at any time he may think fit, by special advertisement or by circular sent through the post to each trustee or member of the board, stating the object of such meeting; and on a requisition stating the object of such special meeting, and signed by five trustees in the case of a special meeting of the trustees, and by three members of the board in the case of a special meeting of the board, being presented to the chairman, or in the event of his illness, death, or resignation, or absence from the county, to the clerk, the chairman or clerk, as the case may be, shall call a meeting of the trustees or of the board, as the case may be, by special advertisement or by circular sent

A.D. 1877.

through the post to each trustee or member of the board, stating the object of such meeting, and the place and date of such meeting: Provided, that no special meeting of the trustees or board shall be called on less than ten days notice:

(2.) Special meetings of any district committee may be called at any time by the district clerk, on the orders of the chairman or any two members of the committee, by circular stating the object of such meeting, and the place and date of such meeting, addressed to each member of the committee, and forwarded by post not less than eight days before such meeting:

(3.) Any meeting, general or special, of the trustees, or of the board or district committee, may be adjourned to a time and place to be specified in the minutes of such meeting; and in the event of a quorum not being present at any general or special or adjourned meeting the clerk of the meeting shall, in the case of meetings of the trustees or of the board, by special advertisement or circular, and in the case of district committees by circular, as herein-before provided, call another meeting, to be held at the hour and place and on any day, not being less than ten or eight days after the date of the special advertisement or circular, as the case may be, within three weeks after the day originally fixed for such meeting:

(4.) Any business appointed by this Act to be transacted, and any assessment by this Act authorised to be imposed at any general or special meeting of the trustees or the board or any district committee, may be transacted or imposed at any adjourned meeting thereof; provided, that no business shall be brought before or transacted at such adjourned meeting which was not brought or appointed to be brought before the original meeting which was so adjourned:

(5.) No motion in regard to any matter or business not mentioned in the advertisement or special advertisement or circular calling any meeting shall be competent, unless notice of the same had been given at the immediately preceding meeting (not being a special or adjourned meeting) or by circular sent through the post not less than eight days before the meeting and addressed to every person entitled to be present and vote thereat:

(6.) Where the business before any meeting relates to the valuation or payment of debts, or the interest thereof, or the mode of providing therefor, or the construction of new roads or bridges, the assessments to provide for the payment or cost of which are by this Act laid on proprietors only, no elected trustee shall be entitled to vote in regard thereto, or in regard to such assessments:

(7.) No person shall have more than one vote at any meeting under this Act, although he may have more than one qualification for voting, except as herein-after provided in the case of the chairman or preses of any meeting; but this provision shall not prevent a person whose name is entered on the list of commissioners of supply as factor for more than one proprietor from voting on behalf of each such proprietor in his absence at a meeting of the trustees.

Chairman to be elected in absence of ordinary chairman.

25. In the absence of the chairman at any meeting of the trustees or of the board or of any district committee, any person elected by the majority of the trustees or members present at such meeting, shall preside thereat; and in case of an equality of votes the trustee or member present and proposed as chairman having or representing the largest valuation in the county or district, as the case may be, and as shown by the valuation roll, shall preside at such meeting, and in all other cases of equality of votes the chairman shall have a casting as well as a deliberative vote.

District committees and board to make reports.

26. Each district committee shall annually make a report of their proceedings to the board, with detailed accounts of their receipts and expenditure, and shall make reports on such other matters at such times and in such manner as may be prescribed by the trustees or the board; and the board shall before each annual general meeting of the trustees make a report of their proceedings to the trustees, with detailed accounts of their receipts and expenditure (if any), and shall make reports at such other times on such matters as may be prescribed by the trustees; and along with such annual report the board shall lay before the trustees the reports and accounts of the district committees respectively.

Appeal from decision of district committee.

27. Any person who shall object to or think himself aggrieved by the decision or resolution of any district committee may appeal, at any time within one month after such decision or resolution, to the board, whose determination therein shall be final; provided, that such appeal shall not prevent the execution

A.D. 1877.

of any of the powers of this Act in any matter affecting any other person not being a party in such appeal.

Appointment of Officers.

Appointment of county officers.

28. The trustees may appoint a clerk, who shall also be clerk to the board, and shall be called the "county road clerk," a treasurer, who shall be called the "county road treasurer," and a collector, who shall be called the "county road collector," and, if they shall think fit, a surveyor who shall be called the "county road surveyor," and, if it shall be found expedient, may appoint more persons than one to execute any of the above-named offices, or may appoint one person to execute two or more of them, and may also appoint such other officers and servants as they may think necessary for carrying this Act into execution; and such officers and servants shall perform the duties from time to time prescribed by the trustees or the board, and shall be subject to removal at any time by the trustees or the board, unless in so far as the power of removal may be modified by special written agreement, and shall find such security as the trustees or the board shall require.

Appointment of district officers.

29. Each district committee may from time to time appoint a district clerk and a district treasurer, and, with the consent of the board, a district collector (it being competent to appoint one person to hold more than one of such offices) and a district road surveyor, and prescribe their or his duties; and, subject to the approval of the board, the district committee may fix the salaries to be paid to and the security to be taken from such district clerk, district treasurer, district collector, and district road surveyor, for the discharge of their or his duties, where such security is required to be taken; and every such officer shall be subject to removal at any time by the district committee, unless in so far as the power of removal may be modified by special written agreement approved of by the board: Provided that it shall be competent for any district committee to appoint to any one or more of such offices any of the officers appointed by the trustees or the board or by another district committee. Every district road surveyor shall be subject to the reasonable orders of the county road surveyor, if one shall be appointed.

Salaries of county road officials.

Allocation of general expenditure.

30. Subject to the approval of the trustees the board shall fix the salaries and allowances to be paid to the several officers and servants appointed and employed by the trustees and the board; and such salaries and allowances, and all other necessary general expen-

diture in the execution of this Act, shall be paid out of the several funds and revenues at the disposal of the trustees, in such manner, at such times, and in such proportions as the trustees shall from time to time fix and determine.

Former officers to continue till removed.

31. The clerks, treasurers, surveyors, collectors, and all other officers who have been appointed under and employed in the execution of any local Act in force at the commencement of this Act relating to the roads, highways, and bridges within the county, (including the burghs wholly or partly situated therein) shall respectively continue to hold and exercise their offices thereafter until they shall respectively be removed by the trustees or board or burgh local authority, as the case may be, or shall resign or be incapable of executing their offices, and shall be subject to the like rules, regulations, and penalties in all respects as if they had been appointed under the authority of this Act; and it is hereby provided that the trustees under such local Acts, or the trustees and burgh local authority respectively, shall have a discretionary power to grant to any of the officers before mentioned, or to any of the officers appointed under this Act, such superannuation allowance, or other compensation, in the event of and to take effect on their immediate or subsequent retirement or removal from their respective offices, as they shall deem fit: Provided always, that any such grant made by the trustees under any such local Act may be reduced or rescinded by the county road board of the county, out of the assessments leviable within which such allowance or compensation is payable, if such board shall consider the same excessive or improper, and that if any officer to whom any such allowance or compensation shall have been so granted shall hold office under the trustees, board, or any district committee of such county, the amount of such allowance or compensation shall be deducted from the salary payable to him by such trustees, board, or district committee, so long as he shall continue to hold such office.

General Management in Counties and Burghs.

Consolidation of trusts.

32. From and after the commencement of this Act, the whole turnpike roads, statute labour roads, highways, and bridges within each county respectively shall form one general trust, with such separate district management as shall be prescribed by the trustees as herein-after provided; and all the roads, bridges, lands, buildings, works, rights, interests, moneys, property, and effects, rights of action, claims and demands, powers, immunities, and privileges whatever, except as herein-after provided, vested in or

A.D. 1877.

belonging to the trustees of any such turnpike roads, statute labour roads, highways, and bridges within the county, shall be by virtue of this Act transferred to and vested in the county road trustees appointed under this Act, who, subject to the qualifications hereinafter expressed, shall be liable in all the debts, liabilities, claims, and demands in which the trustees of such turnpike roads, statute labour roads, highways, and bridges are or were liable under any general or local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, reduced, or extinguished.

Abolition of tolls, statute labour, causeway mail, &c.

33. From and after the fifteenth day of May, or from and after the twenty-sixth day of May when the leases of the tolls in any county run from that date, immediately following the commencement of this Act in any county in Scotland, all tolls within such county, and within any burgh wholly or partly situated therein, shall be abolished, and the exaction of statute labour, and any payments of money by way of conversion thereof, and all bridge money and assessments heretofore leviable for the maintenance of bridges and highways within such county or burgh, shall cease and determine, any Act or Acts to the contrary notwithstanding; and all turnpike roads and bridges within the same shall thereafter be and become highways, and all highways shall be open to the public free of tolls and other exactions, within the meaning of and for the purposes of this Act.

All causeway mail shall be abolished within any burgh from and after the fifteenth day of May first occurring not less than five years after the commencement of this Act in the county within which such burgh is situated or partly situated, unless such date shall fall earlier than the fifteenth day of May one thousand eight hundred and eighty-five, in which case all causeway mail within such burgh shall continue until, and shall be abolished from and after, the said fifteenth day of May one thousand eight hundred and eighty-five.

Application of tolls and statute labour money at present leviable.

34. Until the said fifteenth day of May, or twenty-sixth day of May, as the case may be, the tolls and revenues of each of the roads now maintained as turnpike roads, and all assessments now leviable for the maintenance of roads, highways, and bridges within a county, shall respectively be received and applied by the trustees to the several purposes to which they are respectively applicable under the existing Acts relating thereto.

Trustees to purchase pontages, &c.

35. The trustees of any county or counties, and the local authority of any burgh or burghs, shall adjust and settle with the proprietors or

persons or trustees having the management of any bridge or bridges, forming part of or connecting any highways, whether situated wholly in one county or burgh or not, belonging to any person or corporation, at which pontages are legally leviable, what compensation shall be paid to him or them in respect of his or their patrimonial interest in such pontages abolished by this Act; and if they and such person or corporation cannot agree as to the compensation to be made for the said pontages, then the same shall be fixed and determined, as nearly as may be, in the same manner as is herein-after provided in relation to the valuation of road debts, and shall be paid and provided for in the same manner as road debts: Provided that where such bridge or bridges is or are not situated wholly within one county or burgh, the sums payable under this section shall be allocated in the same manner as is herein-after provided in relation to the allocation of road debts; and such bridge or bridges shall, after the compensation foresaid has been fixed and determined, be highways, and be vested, managed, and maintained as such, and where not situated wholly in one county or burgh, shall be subject to the provisions herein contained with regard to bridges similarly situated belonging to turnpike trusts at the commencement of this Act.

Roads formerly turnpike not wholly situated in one county or burgh.

36. Where any trust existing at the commencement of this Act embraces a turnpike road which is not situated wholly within one county or burgh the following provisions shall have effect; (that is to say,)

(1.) Where this Act shall have been adopted or shall be in force in each of the counties in which such road is situated:

(*a.*) The portion of such road within each such county or any burgh therein shall be vested in and managed and maintained by the trustees, board, and district committees of the county, or the local authority of the burgh, as the case may be, in which such portion is situated:

(*b.*) The whole assets of the trust shall, except as herein otherwise provided, be valued and allocated among the trustees of the counties and local authorities of the burghs respectively in the proportion and in the manner in which the debt affecting such turnpike trust shall be valued and allocated among the trustees of such counties and the local authorities of such burghs respectively under the provisions of this Act:

A.D. 1877.

(*c.*) All lands, heritages, works, and buildings belonging to any such trust locally situated within any county or burgh shall be the property of the trustees of such county or local authority of such burgh, as the case may be, within which the same are so situated, and shall be applied and used or may be sold and disposed of under the powers and for the purposes of this Act:

(*d.*) Where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding, the same shall, failing agreement, be allocated upon and be a charge against the trustees of the county or counties and local authority or authorities of the burgh or burghs within which it is partly situated, as nearly as may be in the same manner as is herein provided in relation to the allocation of road debts between the trustees of a county or counties and the local authority or authorities of a burgh or burghs respectively. The management of the bridge shall, failing agreement, be vested in the trustees or local authority, as the case may be, upon whom the largest portion of the cost of maintenance is allocated:

(2.) Where this Act shall have been adopted or shall be in force in one or more of the counties or burghs in which such road is situated, but shall not have been adopted or shall not be in force in all of such counties or burghs:

(*e.*) The portion of such road within any county or burgh in which this Act has been adopted or is in force shall be vested in and managed and maintained by the trustees, board, and district committees of the county or the local authority of the burgh, as the case may be, in which such portion is situated:

(*f.*) The portion of such road within any county or burgh in which this Act has not been adopted or is not in force shall continue to be vested in and managed and maintained by the trustees having the management thereof at the commencement of this Act:

(*g.*) The whole assets of the trust shall, except as herein otherwise provided, be valued and allocated among

the trustees of the respective counties and local authorities of the burghs situated therein and the trustees having the management of such road, as nearly as may be, in the proportion and in the manner in which debts affecting turnpike trusts shall be valued and allocated among the trustees of counties and local authorities of burghs respectively under the provisions of this Act:

(*h.*) All lands, heritages, works, and buildings belonging to the trust locally situated within any county or burgh shall be the property of the trustees of such county or local authority of such burgh within which the same are so situated or the trustees having the management of such road, as the case may be, and shall be applied and used or may be sold and disposed of under the powers and for the purposes of this Act or of the Act under which the trustees having the management of such road were constituted, as the case may be:

(*i.*) Where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding, the same shall, failing agreement, be allocated upon and be a charge against the trustees of the county or local authority of the burgh within which it is partly situated and the trustees having the management of such road, as the case may be, as nearly as may be in the same manner as is herein provided in relation to the allocation of road debts between the trustees of a county or counties and the local authority or authorities of a burgh or burghs respectively. The management of the bridge shall, failing agreement, be vested in the trustees or local authority, as the case may be, upon whom the largest portion of the cost of maintenance is allocated.

Bridge (not formerly turnpike) not wholly situated in one county or burgh.

37. Where a bridge, not at the commencement of this Act included in a turnpike road trust, is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding, the same shall, failing agreement, be deemed to rest equally upon the counties, or county and burgh, or burghs within which such bridge is partly situated, as the case may be.

A.D. 1877.

Detached parts of counties to form part of the county by which they are surrounded.

38. Any detached part of a county shall, for the purposes of this Act, except in so far as otherwise expressly provided, be considered as forming part of that county by which it is surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which it has the longest common boundary: Provided that such detached parts of counties, if consisting only of parts of parishes, shall respectively be considered for all the purposes of this Act to be parts of the parishes by which they are surrounded, or if partly surrounded by two or more parishes, then as forming part of that parish with which they have the longest common boundary.

This section shall not have the effect of subjecting the proprietor of any lands and heritages within such detached part to assessment for road debts affecting the county by which such detached part is surrounded; but such proprietor shall be and remain liable for any assessments for road debts affecting the county of which such detached part was originally a portion.

A commissioner of supply, the subject of whose qualification is situated within any such detached part of a county, shall be entitled to act as a trustee under this Act for the county of which such detached part is in terms of this section considered to form a part; but shall not be entitled to act as a trustee for such first-mentioned county unless he possesses a qualification beyond the boundaries of such detached part thereof sufficient to entitle him to be enrolled as a commissioner of supply for such county. With a view to ascertain the persons, being commissioners of supply, entitled under the provisions of this Act to act as trustees in those counties in which are included, as herein-before provided, one or more detached parts of any other county or counties, the clerk of supply of each such other county shall, in each month of December after the passing of this Act transmit, free of charge, to the clerk of supply of each county in which any such detached part is so included a list of the persons qualified as commissioners of supply in respect of property in such detached part.

A ratepayer, the subject of whose qualification is situated within any such detached part of a county, shall be deemed to be a ratepayer within the county of which such detached part is in terms of this section considered to form a part; but shall not be deemed to be, in respect thereof, a ratepayer of such first-mentioned county.

List of highways to be made up. Alteration of list.

39. The board shall, at their first meeting, or at an adjournment thereof, make up a list of the roads, highways, and bridges under their management and control; but no road, highway, or bridge

shall be put on such list unless it had for not less than two years before the commencement of this Act been in use to be maintained out of public funds derived from tolls or assessments or other sources of revenue. The roads, highways, and bridges on such list, and no other, shall be maintained and repaired out of the assessments levied under this Act; and no alteration on or addition to such list shall be made except at an annual general meeting of the trustees.

Highways may cease to be such, and other roads may become highways.

40. The trustees may, on a written report from any district committee, declare, at any annual general meeting, that any highway shall cease to be a highway within the meaning and for the purposes of this Act, and that whether another highway shall have been substituted therefor or not; or that any road or bridge which at the commencement of this Act was not maintained out of public funds derived as aforesaid, shall, with the consent of the proprietor, which consent he may effectually give although not an absolute owner, be a highway within the meaning and for the purposes of this Act; but such declaration shall not be competent unless the county road clerk shall have given notice of the same by special advertisement, and by printed notices affixed to the church door of every parish in which any part of such road, highway, or bridge is situated, and also affixed in some conspicuous place at both ends of such road, highway, or bridge, for at least one month before the date of the meeting at which such declaration is made.

A highway ceasing to be a highway may be shut up.

41. After a road has, as herein-before provided, ceased to be a highway, the trustees may direct it to be shut up, and give such notice that it has been shut up as they shall think fit, and the ground occupied by such road, in so far as not required for the purposes of any highway shall fall and belong to the person or persons whose lands immediately adjoin thereto, and if any question shall arise as to whether such ground is required for the purposes of any highway, or as to the person or persons to whom it should fall and belong, the same shall be disposed of by the sheriff, whose decision shall be final.

Any determination of the trustees under this and the preceding section shall be final and conclusive, and not subject to review in any court or by any process or proceeding whatsoever, unless any three ratepayers who shall be dissatisfied with such determination shall at any time within fourteen days after the date thereof appeal to the sheriff, who shall hear and determine the appeal in a summary way, and the decision of the sheriff shall be final and not subject

A.D. 1877.

to review, and the expenses of such appeal shall be in the discretion of the sheriff.

Toll-houses to be first offered to adjoining proprietors.

42. The trustees before selling any toll-house or other building belonging to them shall first offer the same, together with the site thereof, to the person or persons whose lands immediately adjoin thereto, at a price to be fixed by a valuator, to be named by the sheriff, and the price obtained for such toll-house or other buildings shall be applied to the general purposes of this Act.

Provision for footpaths.

43. It shall be lawful for a district committee, subject to the approval of the trustees, to make and, if made, to maintain foot-paths on the side or sides of any highway.

Boundaries of burghs.

44. The boundaries of burghs for the purposes of this Act shall be held to be the boundaries thereof as the same are or may be ascertained, fixed, or determined for police purposes under the provisions contained in any general or local Act of Parliament.

Where the boundaries of any burgh run along a highway, the whole breadth of such highway shall, for the purposes of this Act, be held to be within the boundary of the burgh. Provided that in the case of contiguous burghs or police burghs, or a contiguous burgh and police burgh, the centre of the highway shall be held to be the boundary.

Local authority to have management of roads within burghs.

45. From and after the commencement of this Act, the local authority of each burgh shall be vested with and have the entire management and control of all the highways, and bridges situated within the same, and shall possess the same rights, powers, and privileges, and be subject to the same liabilities in reference to the highways, and bridges (including the construction of new roads and bridges) therein, as the trustees under this Act possess and are liable to in reference to roads, highways, and bridges (including as aforesaid) in the landward part of the county, and shall also have and may exercise with reference to the construction, maintenance, and repair of the roads, highways, and bridges within their respective boundaries, such and the like powers and authorities as they possess with reference to any streets within their respective boundaries: Provided that the local authority of any burgh not containing more than ten thousand inhabitants according to the census last taken may, by a resolution passed at a meeting summoned for the purpose, on not less than one month's notice, by special advertisement, devolve the management and maintenance of the highways and bridges within the boundaries

A.D. 1877.

or forming the boundary thereof upon the trustees of the county within which such burgh or any portion thereof is situated, on payment to such trustees of such an annual sum or upon such terms as may be agreed upon; and in default of such agreement, on payment of such sum or upon such terms as shall from time to time be settled on the summary application of either party by the sheriff, whose decision shall be final: Provided also that any such resolution of the local authority of a burgh may be rescinded, with the consent of and on such terms as may be agreed upon with the county road trustees, and thereupon the original rights, powers, privileges, and liabilities of the said local authority shall revive in full force and effect.

Maintenance and Repair of Highways and Assessments therefor.

Report on condition of highways, and estimate cost of maintenance.

46. Every district surveyor shall, on or before the thirtieth day of March in each year make up and deliver to the clerk of the board, and to the clerk of the district committee of his district respectively—

(1.) A report of the condition of the highways within his district:

(2.) A specification of works and repairs proposed to be executed thereon; and

(3.) An estimate of the sums required for the purposes of the highways within the district for the year from the fifteenth day of May immediately following to the fifteenth day of May in the year succeeding; and each district committee shall, on or before the fifteenth day of April in each year, consider such reports and estimates, and shall immediately transmit the same, together with their recommendations, if any, to the clerk of the board, to be by him laid before the annual meeting of the board.

Where a county is not divided into districts the duty in this section imposed on the district surveyor with respect to his district shall be, as nearly as may be, discharged by the surveyor with respect to the whole county.

Board to meet and consider reports.

47. The board shall hold an annual meeting on such day between the fifteenth day of April and the fifteenth day of May in each year, as they may fix, for the purpose of considering the reports, specifications, and estimates before-mentioned, and relative deliverances of the respective district committees, if any, and shall consider and review the same, and give such orders as may seem necessary thereanent, and their decision shall be final.

A.D. 1877.

Roads or highways may be shut up for repairs.

48. The board or any district committee on a written report from the surveyor or district surveyor that it is necessary to shut up for a limited period any highway, for the purpose of repairing the same, may from time to time authorise the shutting up of such highway for such period as they may deem necessary; provided, that notice of the intention so to shut up a highway shall be given by advertisement in a newspaper circulating in the county or district within which such highway is situated at least fourteen days before such highway shall be so shut up: Provided always, that upon a written report by the surveyor or district surveyor that any highway has become or is about to become dangerous, it may be shut up by the written order of any two members of the board or district committee without any previous notice; but notice shall be immediately given, by advertisement as aforesaid, that it has been shut up.

Assessments in counties for management, maintenance, and repair.

49. The amount required for the management, maintenance, and repair of highways within each district respectively, or, in the option of the trustees, within the several parishes constituting such district, along with a proportion of the general expenses of executing this Act, as allocated by the trustees in manner herein-before mentioned, shall be levied by the trustees by an assessment to be imposed at a uniform rate on all lands and heritages within such districts, or, in the option of the trustees, within each of the parishes constituting such district as aforesaid; and such assessment shall be paid, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which the same is imposed, except in the case of lands and heritages entered in the valuation roll as of the annual value of five pounds or under, in which case the whole of the assessment imposed on such lands and heritages may, in the option of the trustees, be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier; provided, that outgoing tenants or occupiers, removing from lands and heritages during the currency of the year for which such assessments have been imposed, shall have a right of relief against the incoming tenants or occupiers for the proportion of the assessment applicable to the period of the year remaining unexpired at their removal.

Where a county is not divided into districts the assessments by this section authorised shall be imposed upon the whole lands and heritages within the county in the same manner and subject to the same conditions, in and under which they are hereby authorised to be imposed upon the lands and heritages within a district.

Maintenance of bridges in two districts.

50. Where any bridge is partly situated in one district and partly in another district, the burden of maintaining and repairing such bridge shall be deemed to rest equally on such districts.

Assessment in burghs for maintenance and repair.

51. The amount required for defraying the expense of executing this Act within any burgh where there is no rate or assessment now levied for the maintenance and repair of streets or roads within the same, shall be levied by the burgh local authority, at such rates as may be necessary for the purpose, by an assessment to be imposed and levied at a uniform rate on all lands and heritages within the burgh; and such assessment shall be paid, except as otherwise expressly provided, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which such assessments are imposed, unless where the name of the tenant or occupier is not set forth in the valuation roll, in which case the whole of the assessment imposed on such lands and heritages shall be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier.

Former modes of assessment may be retained in certain burghs.

52. Where in any burgh at the time of the commencement of this Act the management and control of the streets and roads within the same, and the power to levy any rates or assessments in respect thereof, is vested in the burgh local authority, in virtue of any general or local Act of Parliament, it shall be lawful to continue to impose and levy such rates or assessments, and the amount required for defraying the expense of executing this Act within such burgh shall be included in the sums for payment of which such rates or assessments may be imposed and levied: Provided that such rates and assessments if limited to a maximum may be raised above such maximum, but only to an extent sufficient to produce the amount required for executing this Act within such burgh as aforesaid: Provided also, that such burgh local authority may, at any meeting called for the purpose, on not less than one month's notice, by special advertisement, pass a resolution that such rates and assessments shall, from and after a date to be fixed in such resolution, thenceforth cease to be levied; and in the event of such resolution being carried by a majority of votes, the maintenance and repair of the streets and roads, and all expenses connected therewith and with the execution of this Act, shall, from and after such date, be provided for by a uniform assessment within the burgh as herein-before provided.

A.D. 1877.

Contracts by Road Authorities.

Power for road authorities to make contracts in respect of repair of roads, highways, or bridges.

53. Contracts in relation to roads, highways, and bridges may be entered into as follows:

(1.) By the trustees of any county or the local authority of any burgh, with the trustees of any other county, or the local authority of any burgh, or with the local authority of any other burgh, or the trustees of any county, for the maintenance and repair of any road, highway, or bridge, which, or any continuation of which, lies within the jurisdiction of the parties to such contract; and

(2.) By the trustees of any county or the local authority of any burgh with any contractor or other person or persons for the repair of any roads, highways, or bridges, which such trustees or local authority are liable to repair, or for the repair of any portion thereof.

Any moneys duly payable in pursuance of any contract under this section in respect of the maintenance and repair of roads, highways, or bridges to any authority, person or persons, who have so repaired the same, shall be deemed to be expenses duly incurred by the authority paying such moneys in the performance of their duties as the road authority of the road, highway, or bridges in respect of which such moneys are paid.

The duration of a contract under this section shall not exceed three years.

A district committee, with the consent of the trustees of any county, may exercise the powers conferred by this section on such trustees.

Extraordinary Traffic.

Power of road authority to recover expenses of extraordinary traffic.

54. Where by the certificate of their surveyors or district surveyor it appears to the authority which is liable to repair any highway that having regard to the average expense of repairing similar roads in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by extraordinary traffic thereon arising from working of quarries, building operations, haulage of wood, construction of works, or other exceptional or temporary cause, such authority may recover in a summary manner before the sheriff (whose decision shall be final), from any person by whose order the extraordinary traffic has been conducted, the amount of such extraordinary expenses as may be proved to the satisfaction of the sheriff to have been incurred by such authority by reason of the damage arising from such traffic as aforesaid.

A.D. 1877.

Provided that any person against whom expenses in respect of extraordinary traffic are or may be recoverable under this section, may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such extraordinary traffic, and thereupon the person so paying the same shall not be subject to any proceedings under this section.

Construction of new Roads and Bridges.

New roads and bridges may be constructed by the board, and assessed for upon proprietors.

55. The board, subject to the approval of the trustees, to be given at their annual general meeting, may from time to time, at a meeting to be called for the purpose by special advertisement, or by special circular sent through the post to every member of the board, stating the object of the meeting, resolve to construct any new road or bridge that they may think requisite, or may enter into an agreement with any person or corporation (including the trustees of any adjoining county or the local authority of any burgh) for the construction of any new road or bridge, and may require such person or corporation to provide the whole or any part of the expense of such new road or bridge as a condition of the construction of the same, and all new roads and bridges so constructed shall be highways; and the expense of such construction, so far as payable by the board, shall be raised by an assessment to be imposed and levied as the trustees may determine either on the county (except as herein-after otherwise provided), or on the district or districts within which such new road or bridge is situated, in the same manner and with the same powers, including the power of borrowing money, as is herein-after provided in the case of assessments for payment of debt in so far as the same are applicable thereto; and such assessment shall not extend over a longer period than fifty years, and shall be levied from and paid by the proprietors of lands and heritages within such county or district or districts; provided, that where any such new bridge is not situate wholly within one county or burgh, the agreement for the construction thereof shall provide for the proportions in which the expense of the future maintenance of such bridge shall be divided between the county or counties and burgh or burghs in which the same is partly situated respectively; and failing such agreement such expense shall be deemed to vest equally upon the counties or county and burgh or burghs within which such bridge is partly situated, as the case may be: Provided always, that no such resolution for the construction of any new road or bridge in any district consisting of an island or group of islands or part of an island shall be carried

A.D. 1877.

into effect without the consent of the district committee of such district, and that no assessment shall be levied on any other part of the county for the expense of such construction, nor shall any assessment be levied on such district for the expense of construction of any new road or bridge in any other part of the county.

The burgh local authority shall have the same powers in regard to the construction of new streets or roads or bridges to be wholly or partly situate within the burgh, which the county road trustees have in regard to the construction of new roads or bridges wholly or partly situated within the county; but the assessments for paying or providing for the expense of such construction shall be levied in the same manner as the assessments for maintaining and repairing the streets within the burgh.

The provisions of this section shall apply to the rebuilding of bridges.

Valuation and Allocation of Debt.

With respect to the valuation and allocation of road debts in counties in which such debts have not been previously valued and allocated, the following provisions shall have effect:

Appointment of Debt Commissioners.

56. For the purpose of valuing and allocating road debts as herein-after provided, the Secretary of State may, by any writing under his hand, appoint two or more persons skilled in law and accounts, who shall be called "Debt Commissioners." The appointment of a Debt Commissioner shall be published in the Edinburgh Gazette, and may be re-called by the Secretary of State at any time, by a writing under his hand, which shall be published in the same manner. A Debt Commissioner shall have power to call for production of all books, accounts, securities, vouchers, and other documents relating to such debts, and to examine witnesses on oath in regard thereto.

Clerks of trusts to make out list of debts.

57. The clerks of the turnpike and statute labour trusts in each county (including the burghs situated wholly or partly therein) shall, whether the roads, highways, and bridges subject to such trusts are wholly situated within such county or not, within two months after the date of the commencement of this Act, make out a list of the whole debts of each such trust, distinguishing as far as possible their order of preference, and also showing what proportions thereof consist of principal, and of arrears of interest, and also the amount of interest chargeable and paid upon such principal, if any, and the names of the creditors in such debts, so far as known to them; and such lists shall be

deposited in the offices of such clerks for the inspection of all persons interested or claiming to be interested in such debts.

Intimation to creditors.

58. The clerks of the several trusts respectively shall, by special advertisement, and also by notice inserted once in the Edinburgh Gazette, within eight days after the foresaid lists have been deposited, give intimation that such lists have been so deposited, and require all persons claiming to be entitled to payment of any debt affecting the roads, highways, and bridges embraced in such trusts, or the tolls or revenues thereof, to lodge their claims and the vouchers thereof with them on or before a day to be specified in such notice, which day shall be at an interval of not less than six weeks and not more than two months from the first publication of such advertisement: Provided that no claim or voucher shall be required to be lodged in respect of any debt due to the Public Works Loan Commissioners or to their Secretary on their behalf.

Revised list of debts to be made up.

59. Within twenty-one days after the day specified in the said notice, the clerks of the foresaid trusts respectively shall, from the statement made up by them, and the claims and vouchers which may be lodged with them, make up a full and complete revised list of all the debts affecting or alleged to affect the roads, highways, and bridges embraced in such trusts, and the tolls or revenues thereof, and the interest due thereon, and the names and designations of the creditors entitled or claiming to be entitled thereto, with such notes or observations on such claims and vouchers as they may think necessary.

Revised list to be open to inspection.

60. The list of debts revised as aforesaid shall, immediately on the expiry of the last-mentioned period, be docquetted and signed by the clerk of the trust, and thereafter deposited in the office of the county road clerk; and where in any trust there is a road, highway, or bridge situated in more than one county, a copy of such list of debts, docquetted and signed as aforesaid, shall be deposited in the office of the county road clerk of each such county in which this Act has been adopted or is in force, and in the office of the clerk of supply of any such county in which this Act has not been adopted or is not in force; and intimation that the same has been so deposited shall be forthwith made by special advertisement, and the said list shall for one month after the first publication of such notice be open for inspection, free of charge, to all persons interested or claiming to be interested therein, and any person claiming to be a creditor of the trust may, during that period require such clerk to insert his name in the said list.

A.D. 1877.

Debts affecting counties and burghs may be compromised.

61. The board or boards of the several counties and local authority or authorities of the several burghs respectively within which the roads, highways, and bridges are situated or partly situated upon which or the tolls or revenues whereof respectively the debts of each trust were charges before the commencement of this Act, may adjust, compromise, and determine, in conjunction with the creditor or creditors, the value of any such debt due or claimed to be due by or from any such trust respectively: Provided that no such adjustment, compromise, or determination shall be effectual unless made or approved of at a special meeting of the board, or at an ordinary or special meeting of the burgh local authority, as the case may be.

Valuation of debts.

62. In the event of any such debt not being adjusted, compromised, and determined as herein-before provided, the trustees of any such county or counties, and the local authority or authorities of any such burgh or burghs, as the case may be, may tender to the creditor therein a written statement of the value at which such debt is estimated by them; and such statement, if accepted by such creditor, or not objected to by him within the period of one calendar month from the date of such tender, shall be held to ascertain and determine the value thereof; and it shall be lawful to such creditor, if dissatisfied with such statement, within one calendar month from the date of such tender, or, when no such tender shall have been made, within six months after the commencement of this Act, at the expiration of such six months, to apply to any one of the Debt Commissioners appointed in terms of this Act, to proceed to ascertain and value such debt; and any one having interest shall be entitled to appear and be heard, and the said Debt Commissioner shall ascertain whether any and what debt is due, with the interest thereon, and shall estimate and determine the value of the same, without regard to any personal or other collateral obligation undertaken by trustees or others, and in making such valuation shall take into account the interest paid on such debt out of the trust funds, the state of repair of the roads or bridges to which the debt is applicable, and generally shall take into consideration every circumstance which might in his opinion reduce, enhance, or in any way affect the value thereof; and the decision of the said Debt Commissioner, who shall also dispose of all questions of expenses, shall be final, save only that if the trustees of such county or counties, or such burgh local authority or authorities, as the case may be, or the creditor in the debt shall be dissatisfied with such decision in point of law, they or any of them may require the Debt Commis-

sioner to state the facts of the case and such question of law, and his decision thereon in a special case; and the Debt Commissioner shall prepare and sign such case, and deliver the same to the person or persons requiring the same, who may within ten days of the date of such case lay a certified copy thereof before one of the divisions of the Court of Session for their decision thereon; and the said division shall, with all convenient speed, hear parties, and give their decision thereon, and shall dispose of all questions of expenses; and, in the event of reversal, the Debt Commissioner shall alter his decision in conformity with the decision of the said division, which shall be final and not subject to review.

Where any creditor shall be found liable in the whole or any part of the expenses of the valuation, as determined by the Debt Commissioner (including a reasonable fee to the Debt Commissioner), the same may be deducted from the sum or sums found due to him before payment thereof, or may be recovered in any other way.

Every determination of the value of a debt in terms of this or the preceding section shall set forth the date at which such debt is so valued, and where made by a Debt Commissioner shall be delivered by him to the creditor in the debt.

Allocation of debts on roads in two or more counties.

63. Where any trust existing at the commencement of this Act comprises any road, highway, or bridge partly situated in two or more counties in Scotland, whether all of such counties shall have adopted this Act or not, the trustees of such counties respectively may adjust, compromise, and determine in what proportions the debts valued as aforesaid affecting such trust shall be allocated and made chargeable upon such counties respectively, and, if they shall fail to do so before the expiration of one month after the date of such valuation, any one of the Debt Commissioners appointed in terms of this Act, on the application of the clerk of any of the said trustees, or of any of the creditors in such debts, shall forthwith proceed to ascertain and determine the proportions in which, according to equity, and taking into consideration all the circumstances of the case, the debts aforesaid ought to be, and shall be, allocated upon, and be a charge against, the several counties respectively, and the decision of such Debt Commissioner shall be final: Provided that the expenses of such allocation (including a reasonable fee to the said Debt Commissioner) shall be payable by the said trustees rateably according to the sums of debt allocated to their respective counties.

A.D. 1877.

Allocation of debts between landward parts of counties and burghs.

64. Where any trust existing at the commencement of this Act comprises any road, highway, or bridge situated partly within any burgh or burghs, and partly within any county or counties, or partly within any two burghs, the trustees of such county or counties, whether all of such counties shall have adopted this Act or not, and the local authority or authorities of such burgh or burghs respectively, may adjust, compromise, and determine in what proportions the debts valued as aforesaid affecting such trust shall be allocated and made chargeable upon such county or counties, and burgh or burghs, respectively; and, on their failing to do so before the expiration of one month after the date of such valuation, any one of the Debt Commissioners appointed in terms of this Act, on the application of the clerk of the said trustees, or of the said local authorities, or any of them, or of any of the creditors in such debts, shall proceed forthwith to ascertain and determine the proportions in which, according to equity, and taking into consideration all the circumstances of the case, the debts aforesaid ought to be and shall be allocated and be a charge against such trustees and such local authority or authorities respectively, and the decision of such Debt Commissioner shall be final: Provided that the expenses of such allocation (including a reasonable fee to such Debt Commissioner) shall be payable by the said trustees or local authority or authorities, rateably according to the sums of debt allocated to their county or counties, burgh or burghs respectively.

Debts to be charged against counties and burghs, and to bear interest. Certificates of debt to be granted.

65. The debts of each trust when valued and allocated as herein-before provided shall be charges against the trustees of the several counties and local authorities of the several burghs respectively and the assessments to be imposed as herein-after provided for the payment thereof and interest thereon as after mentioned; and the trustees and burgh local authorities shall respectively deliver to each creditor a certificate or certificates in the form or as nearly as may be in the form of Schedule (A.) No. 1. hereunto annexed, signed by the chairman of such trustees or by the provost or chief magistrate of such burgh, as the case may be, and each certificate shall be entered in a register to be kept by the county road clerk or by the clerk of the burgh local authority respectively, and shall be conclusive evidence of the right of such creditor to the said debt, and to interest thereon at the rate of four per centum per annum from the date of the valuation of such debt. Such certificate may be transferred by such creditor, or any other person having right thereto for the time being, by an indorsation in the form or as nearly as may be in the form of Schedule (A.)

No. 2. hereto annexed, which transfer shall be entered in the said register; and the person in whose favour such transfer is made and registered shall acquire thereby the whole rights in regard to such debt and interest thereon of the creditor in whose favour such certificate was originally granted.

Extinction of debts not charged in terms of Act.

66. No debts except those valued and allocated as herein-before provided shall be a charge upon the trustees of any county or the local authority of any burgh, and all road debts, except as aforesaid, shall be extinguished, but without prejudice to any claim otherwise competent to the creditors therein against any individual or individuals who may have given any personal or collateral obligation in regard to such debts.

Certain road debts may be charged on entailed estates by bond and disposition in security.

67. Whereas by section sixty-eight of the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, it is enacted "that it shall "and may be lawful for any proprietor or heir of entail in "possession of any entailed estate, or the tutor or curator "of such proprietor or heir of entail who may be desirous of "advancing or lending any sum or sums of money for the purpose "of making or maintaining any turnpike road or building any "bridge on the same to be made or built subsequent to the passing "of this Act either to bind himself personally as a trustee of such "turnpike road, and also to bind the succeeding heirs of entail for "the repayment of any such sum or sums of money to any person "or persons who may advance the same to the trustees of such "turnpike road, or to advance such sum or sums, and to render "the same a burden upon the said entailed estate and the succeeding heirs of entail, or having advanced such sum or sums, to "borrow the like sum or sums, and to bind himself and the said "estate and the heirs of entail succeeding thereto for the same; "and all bonds and obligations for money so to be advanced or "borrowed and applied shall be held to bind such proprietors in "cases where they have personally bound themselves and also the "heirs of entail in such estates for the repayment of such money, "and such bonds and obligations shall be valid and effectual "against the granter of the same and also against the heirs of "entail succeeding to them in such entailed estates, and such sums "shall be and continue to be a real burden on such estates till "repaid out of the tolls and duties levied on such turnpike road: "Provided also, that the share or proportion of such sum or sums "of money so to be advanced or borrowed affecting such succeeding "heirs of entail shall not exceed one year's free rent of the entailed

A.D. 1877.

" lands of such proprietor situated in each parish respectively " through which any such turnpike road or any part thereof shall " run, or on which such bridge or any part thereof shall be built, " and that the heir of entail in possession of such entailed estate " shall be obliged to keep down the interest of such sum or sums " of money so advanced or borrowed: Provided also, that it shall " not be lawful to the creditor or creditors in right of any such " debt to adjudge or otherwise evict the entailed estate for payment " thereof, or any part thereof, but it shall and may be competent " to such creditor or creditors to prosecute such remedy or " remedies against the rents thereof as are given and allowed by " the law of Scotland to heritable creditors:"

And whereas the obligations for such debts were incurred in reliance upon the continuance of a right to levy tolls, which right will be abolished after the commencement of this Act; and whereas it may happen that under the provisions of this Act the full amount of such debts for which such heirs of entail became liable may not be found included in the amount for which certificate of debt is under the preceding section directed to be granted to the creditor or creditors therein: Be it enacted, That the heirs of entail personally liable for payment of such debts, or for the portion thereof not included in such certificate, shall have all the like powers of charging the fee and rents of the entailed estate, or any portion thereof other than the mansion house, offices, and policies thereof, with the full amount of such debts not included in such certificate, and of granting with the authority of the court of session bonds and dispositions in security for the full amount of such debts as aforesaid, as by the Act passed in the thirty-first and thirty-second years of the reign of Her present Majesty, chapter eighty-four, section eleven, are conferred with reference to entailers' debts; and such bonds and dispositions in security may be granted in favour of any parties in the right of such debts at the date when such bonds and dispositions in security are executed.

Provisions for Payment of Debt.

Payment of interest under the provisions of this Act.

68. Until all the debts for which certificates of debt have been granted as herein-before provided shall have been paid as hereinafter provided, the trustees shall annually investigate and determine what sum of money is requisite to pay the interest of such debts remaining unpaid chargeable against the county for the current year, and shall impose and cause to be levied an assessment on all lands and heritages within the county at such a rate as shall be necessary to provide the aforesaid sum; and in like

manner the local authority of a burgh shall impose and levy annually such an assessment as may be necessary to pay the interest of such debts remaining unpaid as are under the provisions of this Act charges against the burgh.

Trustees and burgh local authority to resolve to pay off debt.

69. The trustees of each county shall, at the first general meeting after such allocation, resolve that the debts affecting the highways within such county, if any, valued and allocated as herein-before provided, shall be paid and provided for, and shall give to the creditors therein notice of their intention to pay the same at the ensuing term of Whitsunday or Martinmas, as the case may be, occurring not less than three months after such notice; and the local authority of each burgh shall, at a special meeting held for the purpose, not later than one month after such allocation, resolve that the debts affecting the highways within such burgh, if any, valued and allocated as herein-before provided, shall be paid and provided for, and shall give to the creditors therein notice of their intention to pay the same at the ensuing term of Whitsunday or Martinmas, as the case may be, occurring not less than three months after such notice.

Payment and discharge of debts.

70. At the term of Whitsunday or Martinmas, mentioned in the notice to the creditor in any debt, the trustees or local authority, as the case may be, shall make payment to such creditor of the sum specified in the certificate of debt held by him, along with the interest thereon from the date of valuation until the date of payment, except in so far as already paid, and the creditor shall be bound to deliver up such certificate, with a discharge thereon as nearly as may be in the form of Schedule (A.) No. 3, hereunto annexed, and such discharge shall be entered in the register herein-before mentioned.

Assessment for payment of debt.

71. After such resolution to pay the debts has been agreed to by the trustees of any county, such trustees shall impose and levy annually an assessment on the whole lands and heritages appearing on the valuation roll of such county; and after such resolution has been adopted by the local authority of any burgh, the said local authority shall impose and levy annually an assessment upon the whole lands and heritages appearing on the valuation roll of such burgh; and such assessment shall be imposed and levied in the county or burgh respectively at such rates as shall be sufficient to provide a sum equal to not less than one fiftieth part of the total debt valued and allocated on such county or burgh respectively, and also the yearly interest on such debt, or the balance thereof

A.D. 1877.

from time to time remaining due, at a rate not exceeding five pounds per centum per annum.

All assessments for payment of debt, and for payment of interest on any debt, shall be paid by proprietors only.

Trustees and burgh local authority may borrow on security of assessments.

72. It shall be lawful for the trustees of any county, or the local authority of any burgh, respectively, to borrow on the security of the assessments for the payment of debts to be levied under this Act within their respective boundaries, all or any moneys required in such county or burgh for the purpose of paying off such debts, and such moneys may be borrowed at any rate of interest not exceeding five pounds per centum per annum; and such moneys may be borrowed under an assignation in security in the form contained in the Schedule (B.) No. 1. to this Act annexed or to the like effect, which shall be duly executed, if signed, in the case of moneys borrowed by the trustees, in the manner and by the person or persons herein-after appointed for the purpose, and in the case of money borrowed by the local authority of any burgh, by the provost or chief magistrate and clerk of the local authority of such burgh; and every such assignation in security shall be effectual for securing to the person advancing the sum of money in such deed expressed to be advanced, and to his heirs, executors, and assignees, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such assignation in security provided; and the said assignations in security shall be numbered in the order of succession in which they are granted, and shall be entered by the county road clerk or clerk of the burgh local authority, as the case may be, in a book to be called the register of "road debt securities," to be kept by them for that purpose; and every such assignation in security shall be validly transferred by an indorsation on such assignation in security, by the person entitled thereto for the time being, of a transfer in the form or as nearly as may be in the form of the Schedule (B.) No. 2. hereunto annexed; and the persons in right of such assignations in security shall be creditors upon the assessments thereby expressed to be assigned in security in an equal degree one with another, and shall not have any preference or priority other than is provided in such assignations in security under the powers of this Act.

Loans to be repaid out of assessments imposed under authority of Act.

73. The trustees of any county, and the local authority of any burgh, by whom any such assignations in security as aforesaid shall have been granted shall annually make payment to the creditors therein, out of the assessments coming into their hands for that

purpose, of interest at a rate not exceeding five pounds per centum per annum on the sums contained in any such assignations in security, and also of such farther sums to account of the principal sums contained in such assignations in security as will extinguish the same within the currency of the assessments for extinction of debt to be levied under the powers of this Act; and the said trustees and local authority of any burgh shall, by agreement with the persons advancing any money as aforesaid, determine the order of priority in which the several sums advanced shall be respectively discharged; and the trustees of each county, and local authority of each burgh so borrowing any moneys, are hereby required to keep an exact and regular account of all receipts and payments in respect of principal moneys borrowed as aforesaid, and the interest thereof, in a book or books separate and apart from all other accounts.

Provision for protection of lenders on security of assessments.

74. No person lending any moneys as aforesaid, and taking an assignation in security for repayment thereof, executed in manner directed or allowed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act have been duly complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such assignation in security on the ground that such provisions have not been complied with.

Trustees and burgh local authority may pay off loans, and borrow money for that purpose.

75. Where any moneys shall have been borrowed under the powers of this Act, it shall be lawful for the trustees, or local authority by whom such moneys shall have been borrowed, to pay off the moneys so borrowed, and again to borrow the moneys necessary for that purpose, and also to repay the said last-mentioned moneys, and the interest thereof, under the powers of this Act, but so nevertheless that all moneys borrowed shall be repaid within a period not exceeding fifty years from the time when the assessment for the extinction of debt was first imposed by them under the provisions of this Act.

Unclaimed instalments to be consigned.

76. In case any debt or interest due thereon shall remain in the hands of the trustees of any county, or local authority of any burgh, unclaimed by the persons entitled thereto for the period of three months after the term of Whitsunday or Martinmas at which the same respectively became payable, the trustees and local authority shall respectively be exonered and discharged in so far as respects such debt or interest by consignation thereof in the name of the several persons entitled thereto, so far as known to them, in any chartered or incorporated bank in Scotland.

A.D. 1877.

Sums payable to persons under disability may be consigned.

77. Any sums payable under this Act to persons under disability may be consigned in bank in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in the case of moneys payable to persons under disability.

Saving as to loan to Mull district of Argyllshire.

78. The provisions of this Act shall not apply to the principal money or interest of the debt due to the Public Works Loan Commissioners or their secretary on their behalf from the Mull district of roads trustees; but notwithstanding any of the provisions of this Act, the whole of such principal money and interest shall remain secured and payable and recoverable in terms of the securities given for the same.

General Provisions as to Assessments.

Terms at which assessments shall be payable.

79. All assessments imposed under the authority of this Act shall be deemed and taken to be for the year from the fifteenth day of May preceding the date of imposing the same, and shall be imposed according to the valuation of the lands and heritages in the valuation roll in force for the year in which such assessment is imposed, and the same shall be made payable on or before a day to be fixed at the time of imposing the same, not earlier than the first day of November and not later than the first day of January then next ensuing.

Collection o assessments.

80. All assessments imposed by the trustees under the provisions of this Act may be levied and collected by the county road collector, or such other person or persons as the trustees may from time to time appoint; provided, that it shall be lawful for the trustees, if they shall see fit, to require the commissioners of supply of the county to collect the assessments upon lands and heritages imposed by the trustees under the provisions of this Act, and the commissioners of supply of the county shall cause all such assessments to be levied and collected, when required to do so by the trustees, who shall be liable for and pay the whole necessary expenses attending such collection.

Board to hear appeals.

81. All appeals by persons complaining that they have been improperly assessed in respect of any assessment imposed by the trustees under the provisions of this Act shall be heard and determined by the board, or in the case of any insular district by the district committee of such district; and the trustees when imposing any assessment shall fix a day, not being less than fourteen days preceding the day on which such assessment under this Act is made payable, on or before which appeals by any persons complaining that they have been improperly assessed shall be lodged with the

county road clerk, or in the case of insular districts with the district clerk as the case may be, and another day, not less than fourteen days thereafter, on which such appeals shall be heard: Provided that notice of both such days shall be given upon or along with the notice of assessment: Provided also, that it shall be lawful for the board to relieve from assessment any occupiers of lands and heritages under the annual value of four pounds, as appearing on the valuation roll, on the ground of poverty.

Power to recover assessments imposed by trustees.

82. The whole powers and rights of issuing summary warrants and proceedings, and all remedies and provisions enacted for recovery of the land and assessed taxes, or either of them, and other public taxes shall be applicable to the assessments by this Act authorised to be imposed and levied by the trustees of any county, and sheriffs, magistrates, justices of the peace, and other judges may, on the application of the clerk or collector, grant warrant for the recovery of such assessments, in the like form and under the like penalties as is provided in regard to such land and assessed taxes and other public taxes: Provided, nevertheless, that it shall be competent to the trustees to prosecute for and recover such assessments by action in the sheriff small debt court, or in any other court, as the case may be, and that in any summons, complaint, or action for the recovery of such assessments more than six defenders may be cited and called, any law or practice to the contrary notwithstanding; and all assessments imposed in virtue of this Act shall, in the case of bankruptcy or insolvency, be preferable to all debts of a private nature due by the parties assessed.

Assessments in burghs, how to be levied and recovered.

83. The local authority of any burgh shall, in the imposing, levying, and recovering of the assessments authorised by this Act, possess the whole powers, rights, and remedies in force for the time being within such burgh, with reference to the imposing, levying, and recovering of the police assessment, or other assessment or rate levied by the local authority within such burgh; and the assessments authorised by this Act may be collected along with and under the like powers and rights, and subject to like exemptions as the said police assessment or other assessment or rate. The whole amount of the assessments authorised by this Act may be levied on and recovered from the tenant or occupier, who, on payment and on production of a receipt therefor by the collector, shall be entitled to deduct one half of the amount, from the rent payable to the proprietor; and all such assessments shall, in the case of bankruptcy or insolvency, be preferable to all debts of a private nature due by the persons assessed; provided that it shall be lawful

A.D. 1877.

for the local authority to relieve from assessment the occupiers of lands or heritages under the annual value of five pounds as appear on the valuation roll, on the ground of poverty.

Burgh may apply certain funds to maintenance of roads in lieu of assessments.

84. When in any burgh there shall be funds available, and which may be lawfully applied, for the maintenance and repair of highways therein, under the control of the local authority of any burgh, or for the payment of debt affecting any such highways, such local authority may apply such funds for such purposes in aid of the assessment authorised to be imposed by this Act; or otherwise, if such funds shall be sufficient for such purposes, the whole or such part thereof as may be necessary may be so applied, in place of making an assessment under the provisions of this Act.

Special Provisions as to certain Bridges.

As to cost of maintaining, &c. certain bridges.

85. Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or burgh, as the case may be, within which they are locally situated, but also of the adjoining counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of managing, maintaining, repairing, and if need be, rebuilding such bridges and of paying the debt affecting or which may effect the same, should be imposed upon the county or burgh within which they are so situated: Be it enacted, that in respect of such bridges the following provisions shall have effect:

(1.) It shall be lawful for the county road clerk or clerk of supply of any county, or for the town clerk or clerk of any burgh to apply to the Secretary of State to determine that any bridge locally situated within a county or burgh in respect of its accommodating other traffic than that of such county or burgh only, shall be deemed to belong in common to the county or counties, and burgh or burghs, to be named in his determination:

(2.) Upon such application being presented to the Secretary of State, he may, if he shall think fit, by any writing under his hand appoint any two persons as commissioners to institute a local inquiry as to the circumstances of the case, and after hearing all parties interested, to report thereon to the Secretary of State, and for the purposes of such inquiry the commissioners shall have power, after such public notice as they may think sufficient, to examine witnesses, and to call for such documents as they may

consider necessary, and to do all such matters and things as may seem expedient to them for the purposes of the inquiry:

(3.) If the commissioners are of opinion that the Secretary of State should determine that the burden of managing, maintaining, repairing and, if need be, rebuilding the bridge mentioned in the application and of paying the debt affecting or which may affect the same should not be borne wholly by the county or burgh within which the same is locally situated, they shall prepare and transmit along with their report the draft of the determination which they recommend that the Secretary of State should make, setting forth therein the proportions in which such burden should be borne by the county or counties and burgh or burghs named in the determination:

(4.) The Secretary of State after such further inquiry, if any, as he shall deem necessary, may approve of the draft submitted with or without alterations, and any determination made by him under his hand and seal, shall have the same effect as if it were contained in this Act: Provided always, that such determination shall be laid before both Houses of Parliament, and if either House of Parliament, within forty days after the same has been so laid before it, resolve that such determination ought not to take effect, the same shall be of no effect (without prejudice to the making of any new determination), but otherwise shall come into operation at the expiration of the said forty days, or any later date mentioned in the determination:

(5.) The Secretary of State may make orders as to the costs incurred in relation to any inquiry under this section, including the reasonable remuneration of the said commissioners, and as to the parties by whom such costs shall be paid, and the funds or assessments against which they shall be charged; and the Court of Session may interpone their authority to any order made by the Secretary of State as to such costs, and may grant decree conform thereto, upon which execution and diligence may proceed in common form.

Special Provisions as to Highways partly in England.

86. Where any trust existing at the commencement of this Act comprises a road, highway, or bridge which is situated partly

As to cost of maintaining, &c. high-

A.D. 1877.

Roads partly in Scotland and partly in England.

in Scotland and partly in England, the following provisions shall have effect; (that is to say,)

(1.) It shall be lawful for the county road clerk or clerk of supply of any county in Scotland in which such road, highway, or bridge is partly situated, or for any other person interested, to apply to the Secretary of State to determine the manner in which such road, highway, or bridge shall be managed, maintained, repaired, and (in the case of a bridge) if need be rebuilt, and also the manner in which the debts affecting such trust and the property and assets belonging thereto shall be valued and allocated upon or among, as the case may be, the county or counties and burgh or burghs in Scotland, and the road authority in England to be named in his determination:

(2.) Upon such application being presented to the Secretary of State, he may, if he shall think fit, by any writing under his hand appoint any two persons as commissioners to institute a local inquiry as to the circumstances of the case, and after hearing all parties interested, to report thereon to the Secretary of State, and for the purposes of such inquiry the commissioners shall have power, after such public notice as they may think sufficient, to examine witnesses on oath, and to call for such documents as they may consider necessary, and to do all such matters and things as may seem expedient to them for the purposes of the inquiry:

(3.) The commissioners shall prepare and transmit along with their report the draft of the determination which, having regard to the general provisions of this Act, they recommend that the Secretary of State should make in the premises:

(4.) The Secretary of State after such further inquiry, if any, as he shall deem necessary, may approve of the draft submitted with or without alterations, and any determination, which, if he shall think proper, may include a provision that the foresaid trust shall be continued in the manner and for the period therein mentioned for the purpose of levying tolls on the portion of such road or highway in England, made by him under his hand and seal, shall have the same effect as if it were contained in this Act: Provided always, that such determination shall be laid before both Houses of Parliament, and if either House of

Parliament, within forty days after the same has been so laid before it, resolve that such determination ought not to take effect, the same shall be of no effect (without prejudice to the making of any new determination), but otherwise shall come into operation at the expiration of the said forty days, or any later date mentioned in the determination:

(5.) The Secretary of State may make orders as to the costs incurred in relation to any inquiry under this section, including the reasonable remuneration of the said commissioners, and as to the parties by whom such costs shall be paid, and the funds or assessments against which they shall be charged; and any such order may be made a rule of Her Majesty's High Court of Justice, and may be enforced accordingly; and the Court of Session may interpone their authority to any order made by the Secretary of State as to such costs, and may grant decree conform thereto, upon which execution and diligence may proceed in common form.

Miscellaneous.

Authentication of documents relating to the execution of Act.

87. For the purposes of this Act, the signature of the chairman of the trustees or of the chairman of the board, or of the preses of any meeting of the trustees or of the board, or of the chairman or preses of any district committee to be appointed in terms of this Act, adhibited to any writing or document except as herein-after provided, shall be equivalent to the signatures of the whole trustees or members of the board, or of the whole members of such district committee present at a meeting thereof respectively; and the addition to such signature of the word "chairman" or "preses" shall be good primâ facie evidence that such signature is the signature of such chairman or preses, as the case may be, and that such writing or document is genuine and authentic.

Minutes of trustees, &c. to be receivable in evidence.

88. Any minute made of proceedings at meetings of the trustees, board, or district committee, if signed either at the meeting of the trustees, board, or district committee at which such proceedings took place, or at the next ensuing meeting of the trustees, board, or district committee by any person purporting for the time being to be the chairman or preses of such meeting, shall be receivable in evidence of such proceedings in all legal proceedings without further proof; and until the contrary is proved every meeting of the trustees, board, or district committee, where minutes have been so made of the proceedings shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified.

A.D. 1877.

Actions now pending transferred to trustees under Act.

89. No action, prosecution, or other proceeding by or against the trustees or other persons acting before the commencement of this Act, under the authority of any general or local Act, in relation to the roads, highways, and bridges vested in the county road trustees or burgh local authority, as the case may be, under this Act, shall cease or be discontinued or be prejudicially affected by this Act, but the same shall continue and take effect both in favour of and against the said county road trustees or burgh local authority, as the case may be, under this Act, in the same manner in all respects as the same would have continued and taken effect in relation to the trustees or other persons under any of the said general or local Acts, if this Act had not been passed: Provided, that if any question shall arise as to whether any action, prosecution, or other proceeding should be carried on at the instance of or against the county road trustees or the burgh local authority, the same may be disposed of incidentally, and without any action of transference or other separate proceeding by the court or judge before whom such action, prosecution, or proceeding depends.

Former trustees to account for moneys and deliver up books.

90. All persons acting or who have acted under any of the general or local Acts in force at the commencement of this Act as trustees of any of the turnpike roads, statute labour roads, highways, or bridges within the county, or as clerks or officers of such trustees, who shall, at the commencement of this Act, have in their custody, power, or possession any moneys collected by virtue of such Acts, or any books, deeds, papers, writings, property, or effects belonging to the said turnpike or statute labour trusts respectively, or relating to the execution of such Acts, shall pay and deliver up the same to the county road trustees, or to such person as they shall appoint to receive the same, who shall hold them, and be liable to pay them over or make them forthcoming, subject to the provisions of this Act.

Books of former trustees to be evidence.

91. All books containing the accounts and proceedings of the trustees or other persons who have acted under any of such Acts shall and may be given in evidence in all claims, prosecutions, appeals, actions and proceedings whatsoever under this Act, in the same manner as they might have been used under the said Acts.

Trustees not to incur personal liability.

92. A trustee or member of a board, or district committee, by being party to or executing in his capacity as aforesaid any contract or other instrument, or otherwise executing any of the powers under this Act, shall not be subject individually to any action, prosecution, or other legal proceeding; and the trustees may apply any moneys from time to time coming into their

A.D. 1877.

hands for the purpose of paying any expenses of legal proceedings, or any damages they may incur in the bonâ fide execution of the powers granted by this Act to them.

Trustees not to hold any office of profit or participate in profits of any contract.

93. If any trustee—

(1.) Holds any office or place of profit under this Act; or

(2.) Participates in the profits of any work done; or

(3.) Is concerned in or participates in the profit of any contract entered into under this Act;

Such person shall cease to be a trustee, and his office shall thereupon become vacant, subject to the exceptions following; that is to say,

(*a.*) A trustee shall not vacate his office by reason of his being a shareholder in any joint stock or incorporated company entering into any contract with or supplying any article by order of the trustees or any board or any district committee; and

(*b.*) A trustee shall not vacate his office by reason of his being interested in any sale, feu, or lease of any lands, or any loan of money to the trustees.

Nevertheless a trustee or member of a board, or district committee shall not be entitled to vote in respect of any contract with or any supply of articles by order of the trustees, board, or district committee, where such contract is entered into with or such articles are supplied by any company in which he is a shareholder, or in respect of any question connected therewith, or in respect of any such sale, feu, lease, or loan as herein-before mentioned; and if he does so vote his vote shall not be counted, and he shall incur for each time when he so voted a penalty not exceeding twenty pounds.

No person holding office to participate in profits of any contract.

94. No person holding any office under this Act shall directly or indirectly participate in the profits of any work done by order of, or be concerned in or participate in the profit of any contract entered into with, or any supply of articles made to the trustees, board, or any district committee, under the penalty of one hundred pounds; and it shall be in the option of the trustees, board, or district committee, and competent to them, to render any contract null and void, in the profit of which any such person has participated or may participate.

Trustee may act as sheriff or justice.

95. No trustee shall be disqualified from acting as a sheriff or justice of the peace in the execution of this Act, by reason of his being such trustee.

A.D. 1877.

Moneys to be lodged in bank.

96. All moneys received by or on behalf of the trustees or the board under the authority of this Act shall, on the receipt thereof, be paid by the person receiving the same into an account to be kept in name of the trustees or of the board with some incorporated or joint stock bank or branch thereof, to be for that purpose appointed by the board.

Cheques on bank account of trustees or board.

97. All cheques on the bank accounts kept by the trustees or board shall be signed by one member of the board and by the treasurer; and no cheques shall be drawn on such accounts for any other purpose than the payments which shall from time to time be authorised by the trustees or the board.

Cheques on bank account of district committee.

98. All sums passed by the trustees or the board to the account of any district committee for the management, maintenance, and repair of the highways within such district shall be respectively paid into an account to be kept in name of the district committee with an incorporated or joint stock bank or branch thereof to be appointed by the board, and all cheques on such account shall be signed by one member and the treasurer of the district committee.

Execution of bonds and other securities.

99. All bonds, mortgages, debentures, or other securities for money borrowed by the trustees, and all dispositions and conveyances of property belonging to the trustees, shall be signed by two of the trustees and by the clerk except where otherwise expressly provided; and the clerk shall keep a register of all bonds, mortgages, debentures, or other securities granted by the trustees under this Act and of the transfers thereof.

Mortgages to be personal estate.

100. All certificates, bonds, mortgages, debentures, or other securities granted under the authority of this Act, and all money advanced and lent on the security of any assessment leviable under this Act, shall be moveable or personal estate, and transmissible as such.

Application of moneys not otherwise appropriated.

101. All moneys received by the trustees on account of assessments or penalties, or otherwise, for the application of which no special provision is made in this Act, shall be applied as follows:

(1.) In payment of the salaries and allowance of officers and servants, and the general expenses of management of the trust:

(2.) In payment of the expense of maintaining, repairing, and improving the several highways:

(3.) In payment of interest on the debts affecting the highways, valued and allocated as herein-before provided, and thereafter towards payment of the principal of such debts.

A.D. 1877.

Audit of accounts.

102. The accounts of the trustees shall be balanced annually on the fifteenth day of May, and shall be audited by an auditor appointed by the sheriff by any writing under his hand. The accounts as audited shall be laid before the next annual general meeting of the trustees.

Annual reports.

103. The trustees of counties and local authorities of burghs shall once a year, at such time and in such form as the Secretary of State may direct, make a report as to their income and expenditure and such other matters as the Secretary of State may direct, and such report shall be laid before both Houses of Parliament.

Repeal of Acts.

104. From and after the commencement of this Act in any county, the Act passed in the eighth and ninth years of the reign of Her present Majesty, chapter forty-one, and the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, except the sections thereof incorporated herewith as after mentioned, shall cease to have effect therein; provided that nothing herein contained shall affect anything duly done or suffered, or any right or liability acquired, accrued, or incurred, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment contained in either of the last-mentioned Acts, or in any other Act which, from and after the commencement of this Act in any county, shall cease to have effect therein: Provided also, that until the fifteenth day of May or twenty-sixth day of May, as the case may be, following the commencement of this Act in any county all provisions for levying, collecting, and recovering toll duties, statute labour conversion money, bridge money, and other moneys of whatever kind, for managing, maintaining, and repairing roads, bridges, and highways situated or partly situated in such county or in any burgh therein, and also all provisions against persons evading or attempting to evade payment of such toll duties and other moneys, shall continue in full force and effect, and may be put in operation by the trustees or burgh local authority under this Act, as the case may be, in the same manner as they might have been put in operation by the trustees under the other Acts mentioned in this section.

Incorporation of parts of General Turnpike Act.

105. The following sections of the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, viz., sections eighty, eighty-one, eighty-three, eighty-four, eighty-five, sections eighty-seven to ninety-two, both inclusive ninety-four, and sections ninety-six to one hundred and eight, both inclusive, in so far as the same are not inconsistent

A.D. 1877.

herewith, shall be and are hereby incorporated with this Act, and, from and after the commencement of this Act in any county, shall extend and apply to all the highways made or to be made within such county, or within the burgh or burghs situated or partly situated within the same; and in the construction of the said Act, with reference to this Act, the expression "trustees under any Turnpike Act," or words having the like import, and the expression "turnpike roads" shall mean and apply to the trustees of counties and local authorities of burghs under this Act, and the roads, highways, and bridges placed under their management by this Act, as the case may require, in so far as such application shall not be excluded by the context or any of the provisions of this Act; and where notice is required to be given "on the two nearest toll bars," it shall be sufficient if it is given once in two newspapers circulating in the county or burgh, as the case may be: Provided, that it shall not be lawful for the trustees, or local authority, as the case may be, or any one authorised by them, under the powers conferred by the eightieth section of the recited Act, to carry away any materials to be used by them for any purpose whatsoever, to a greater distance than three miles from the place where such materials have been obtained, unless satisfaction shall be made for the same in the manner provided in said section in the case of stones to be used for building.

Recovery and application of penalties.

106. All penalties under this Act or the enactments incorporated herewith may be recovered, together with the expenses of process, at the instance of the procurator fiscal, or of the clerk of the trustees, or of the clerk of the burgh local authority, as the case may be, upon the testimony of one or more credible witnesses, before the sheriff or any two justices of the peace of the county, in which the same shall have been incurred, under the provisions of the Summary Procedure Act, 1864; and all the jurisdictions, powers, and authorities necessary for this purpose are hereby conferred on sheriffs and justices of the peace, and their decision shall be final, save only that the provisions of the Summary Prosecution Appeals (Scotland) Act, 1875, shall apply to the same.

Every prosecution shall be begun within six calendar months after the penalty shall have been incurred and not afterwards: Provided, that this shall not apply to any proceedings for the recovery of assessments levied under this Act.

It shall be lawful for any person acting in the execution of this Act, and such other person as any such person shall call to his assistance, or for any person seeing any offence committed against

this Act, without any warrant or authority other than this Act, brevi manu, to seize and detain any person whose name and place of abode are unknown, and who shall commit any such offence, and take such person without delay before the sheriff or any neighbouring justice of the peace for the county where the offence shall have been committed or where such offender shall be seized and apprehended, who shall forthwith examine and discharge or commit such person till caution de judicio sisti be found, as the case may seem to require.

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the trustees or of the burgh local authority, as the sheriff or justices of the peace shall direct.

Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff or justices of the peace.

Every person found liable in any penalty recoverable summarily under this Act shall, failing payment thereof, immediate or within a specified time, as the case may be, and expenses, be liable to be imprisoned for a term not exceeding sixty days; and the conviction and warrant may be in the form No. 3 of Schedule K. of the Summary Procedure Act, 1864.

A.D. 1877.

SCHEDULES.

SCHEDULE (A.) No. 1.

I [*A.B., chairman of the county road trustees of the county of , or provost or chief magistrate of the burgh of* , as the case may be], in terms of "The Roads and Bridges (Scotland) Act, 1877," certify that [*name and designation of creditor*] is a creditor in turnpike road debt [*or* statute labour debt, *or, as the case may be*] in respect of moneys lent to or for behoof of [*specify the particular trust in the case of turnpike debt, and the district or parish in the case of statute labour debt*], valued at the sum of , as at the day of , 18 , and which [*or* whereof the sum of , *as the case may be*] has been allocated on the county of [*or* burgh of , *as the case may be*], all in terms of the provisions of the said Act.

Witness my hand, this day of 18 .

(Signed) *A.B.*

SCHEDULE (A.) No. 2.

I [*name and designation of cedent*] transfer to [*name and designation of assignee*], his heirs, executors, and assignees my whole right and interest under this certificate.

[*To be signed and dated by the cedent.*]

SCHEDULE (A.) No. 3.

I [*name and designation of creditor*] hereby discharge the debt specified in this certificate with all interest thereon.

[*To be signed and dated by the creditor.*]

SCHEDULE (B.) No. 1.

BY virtue of "The Roads and Bridges (Scotland) Act, 1877," we, two of the county road trustees of the county of , and the clerk of the said trustees, acting under the said Act, as representing the said trustees [*or* the provost, *or* chief magistrate,

as the case may be, and clerk of the local authority of the burgh of , acting under the said Act, as representing the local authority of the said burgh,] grant us to have borrowed and received from [*name and designation of lender*] the sum of pounds for the payment of valued road debt allocated on the county of [*or* burgh of *as the case may be*] under the provisions of the said Act. In consideration whereof we assign to the said [*name of lender*], his heirs, executors, and assignees, all the assessments to be raised and paid within the said county [*or* within the said burgh, *as the case may be*] for the payment and extinction of debt under the provisions of the said Act, in security of the repayment of the said sum of pounds, and of the interest thereof after the rate of pounds per centum per annum from the day of until payment, which sum is to be repayable, with the interest at the rate foresaid, as follows; [*state the terms of repayment according to the arrangement*]. And we consent to registration. In witness whereof [*insert testing clause in common form*].

SCHEDULE (B.) No. 2.

I [*name and designation*], in consideration of the sum of pounds, transfer to [*name and designation*], and his heirs, executors, and assignees, an assignation in security, numbered [*insert the number of the assignation*], and dated [*insert date*], granted by the trustees of the county of acting under "The Roads and Bridges (Scotland) Act, 1877," [*or* by the local authority of the burgh of , *as the case may be*], for [*insert the stipulated annual payment and duration thereof*], from the day of . And I consent to registration. In witness whereof [*insert testing clause in common form*].

Roads and Bridges (Scotland).

A

B I L L

[AS AMENDED IN COMMITTEE]

To alter and amend the Law in regard t
Maintenance and Management of Road
Bridges in Scotland.

(*Prepared and brought in by*
The Lord Advocate and Mr. Secretary Cross.

Ordered, by The House of Commons, *to be Print*
22 *June* 1877.

[Bill 214.]

Under 8 *oz.*

Roads and Bridges (Scotland). (No. 2.) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title and commencement of Act.
2. Extent of Act.
3. Interpretation.
4. For ascertainment of persons entitled to act as commissioners of supply in counties comprehending detached parts of other counties.
5. Boundaries of burghs.

Continuance of existing Local Acts.

6. Continuance of existing Local Acts.

Adoption of the Act wholly or partially.

7. How Act may be adopted in counties.
8. Registration and publication of resolution to adopt Act.
9. When provisions of this Act adopted in any county, the burghs therein having a population under thirty thousand shall form part of the county as respects the roads to which such provisions relate, subject to powers of separation in certain cases.
10. Burghs having a population of thirty thousand or upwards to manage and maintain their own roads.
11. Other burghs having a population of ten thousand or upwards may resolve to manage and maintain their own roads.
12. Consideration to be paid to road trustees.
13. Burghs having a population of ten thousand or upwards may apply for provisional orders for removal of toll-bars.
14. Procedure in respect to provisional orders.
15. Costs to be awarded in certain cases in respect to Bills for confirming such orders.
16. Consolidation of trusts.
17. Roads situated in more than one county.

Clause.
18. Abolition of tolls.
19. Abolition of statute labour conversion money.

Appointment of County Road Trustees, Board, and Committees.

20. Appointment of county road trustees.
21. Trustees designated and incorporated.
22. Appointment of county road board.
23. County may be divided into districts and district committees appointed.
24. Occasional vacancies to be supplied.
25. Failure to elect not to invalidate acts of trustees.

Meetings of Trustees, Board, and Committees.

26. Time and place of general meetings of the trustees.
27. Meetings of board and district committees.
28. Quorum at meetings of trustees, board, and district committees.
29. Regulations as to meetings and proceedings of trustees, board, and district committees.
30. Chairman to be elected in absence of ordinary chairman.
31. Board and district committees may appoint sub-committees.
32. District committees and board to make reports.
33. Appeal from decision of district committee.

Appointment of Officers.

34. Appointment of county officers.
35. Appointment of district officers.
36. Salaries to be fixed by the board.

General Management in Counties and Burghs.

37. List of highways to be made up. Alteration of list.
38. Highways may cease to be such, and other roads may become highways.
39. A road ceasing to be a highway may be shut up.
40. Toll-houses to be first offered to adjoining proprietors.
41. Provision for footpaths.

Maintenance and Repair of Highways and Assessments therefor.

Clause.
42. Surveyor to report on condition of highways, and estimate cost of maintenance.
43. Board to meet and consider reports.
44. Roads or highways may be shut up for repairs.
45. Assessment in counties for management, maintenance, and repair.
46. Maintenance of bridges in two counties or districts.
47. Assessment in burghs for maintenance and repair.
48. Former modes of assessment may be retained in certain burghs.
49. Provision for special rating of mines, &c.
50. Minerals having direct railway connexion with public railways or canals to be rated on one fourth of their annual value, subject to special rating as last provided.
51. Locomotives to be licensed.

Construction of new Roads and Bridges.

52. New roads and bridges may be constructed by the board, and assessed for upon proprietors.

Valuation and Allocation of Debt.

53. Clerks of trusts to make out lists of debts.
54. Intimation to creditors.
55. Revised list of debts to be made up.
56. Revised list to be open to inspection.
57. Debts to be charged against counties and burghs, and may be compromised.
58. Valuation of debts.
59. Allocation of debts on roads in two or more counties.
60. Allocation of debts between landward parts of counties and burghs.
61. Allocation of debt where road partly situated in England.
62. Certificate of debt to be granted to creditors.
63. Certain road debts may be charged on entailed estates by bond and disposition in security.

Provisions for Payment of Debt.

Clause.
64. Payment of interest.
65. Trustees and burgh local authority may resolve to pay off debt.
66. Assessment for payment of debt.
67. Trustees and burgh local authority may borrow on security of assessments.
68. Loans to be repaid out of assessments imposed under authority of Act.
69. Provision for protection of lenders on security of assessments.
70. Trustees and burgh local authority may pay off loans, and borrow money for that purpose.
71. Unclaimed instalments to be consigned.
72. Sums payable to persons under disability may be consigned.

General Provisions as to Assessments.

73. Terms at which assessments shall be payable.
74. Collection of assessments.
75. Board to hear appeals.
76. Power to recover assessments imposed by trustees.
77. Appeals against and recovery of assessments in burgh.
78. Burgh may apply certain funds to maintenance of roads in lieu of assessments.

Miscellaneous.

79. Authentication of documents relating to execution of Act.
80. Minutes of trustees, &c. to be receivable in evidence.
81. Actions may be sued and defended in name of clerk.
82. Actions now pending transferred to trustees under Act.
83. Former trustees to account for moneys and deliver up books.
84. Books of former trustees to be evidence.
85. Trustees not to incur personal liability.
86. Trustees not to hold any office of profit or participate in profits of any contract.
87. No person holding office to participate in profits of any contract.
88. Trustee may act as sheriff or justice.
89. Moneys to be lodged in bank.

Clause.
90. Cheques on bank account of trustees or board.
91. Cheques on bank account of district committee.
92. Execution of bonds and other securities.
93. Mortgages to be personal estate.
94. Application of moneys not otherwise appropriated.
95. Audit of accounts.
96. Repeal of Acts.
97. Incorporation of parts of General Turnpike Act.
98. Recovery and application of penalties.
99. Court of Session to enforce compliance with provisions of Act.

Schedules.

A

B I L L

TO

Amend the Law in regard to the Management and Maintenance of Roads and Bridges in Scotland. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and commencement of Act.

1. This Act may be cited for all purposes as "The Roads and Bridges (Scotland) Act, 1877;" and, except in so far as otherwise expressly provided, the several provisions thereof shall commence and take effect in each county and burgh from the date of the adoption therein of such provisions respectively in manner hereinafter provided.

Extent of Act.

2. This Act shall apply to Scotland only, except in so far as otherwise expressly provided.

Interpretation.

3. In this Act the following words and expressions shall have the meanings hereby assigned to them respectively, unless there be something in the subject or context repugnant to such construction:

"Sheriff" shall include sheriff substitute:

"The trustees" shall mean the county road trustees appointed and acting in any county under this Act:

"The board" shall mean the county road board appointed and acting in any county under this Act:

"The district committee" shall mean the district road committee appointed and acting in any district under this Act:

"Clerk," "treasurer," "surveyor," and "collector" shall respectively mean the county road clerk, the county road treasurer, the county road surveyor, and the county road collector appointed and acting for the time being in any county under this Act:

"Burgh" shall mean and include royal burgh, parliamentary burgh, and every other burgh and populous place under the

A.D. 1877.

management of any magistrates and council, commissioners of police, or other local authority elected by virtue of any general or local Act:

"Burgh local authority" or "local authority of any burgh" shall mean the magistrates and council, commissioners of police, or other local authority having the management and control of the streets, and the power to levy assessments in respect thereof, in any burgh, in virtue of any general or local Act or of this Act:

"County" shall mean the county exclusive (except where otherwise specially provided) of any burgh wholly or partly situated therein, and of any detached parts of such county, but shall include any detached parts of other counties surrounded by such county, or which, if surrounded by more than one county, have the longest common boundary with such first-mentioned county:

"Commissioners of supply" of a county shall not include any persons whose qualification as such is derived from property situated in any detached part of such county, but shall include all persons qualified as commissioners of supply of any other county in virtue of property situated in any detached part thereof which by this Act is included in such first-mentioned county:

"Parish" shall include united parish, but shall be exclusive of any burgh wholly or partly situated therein:

"Turnpike road" shall include any road and bridge under the management of any turnpike road trust, and any bridge under the management of a separate trust, if connecting any turnpike roads or portions of a turnpike road:

"Statute labour road" shall include any road and bridge maintained by statute labour, or by money raised as the conversion or in lieu of statute labour, or by the assessment known as bridge money:

"Highway" shall mean and include any turnpike road or statute labour road which under the provisions of this Act is vested in county road trustees, and any other road when declared to be a highway under the provisions of this Act, and all bridges forming part of such highway:

"Bridge" shall include the accesses thereof:

"Tolls" shall include pontages:

"Proprietor" and "lands and heritages" shall have the same meanings as are attached thereto respectively in the Act passed in the seventeenth and eighteenth years of the reign

of Her present Majesty, chapter ninety-one, intituled "An Act for the valuation of lands and heritages in Scotland;" and the expression "the valuation roll" shall mean the valuation roll in force for the time in any county or burgh, as the case may be, made up under the authority of the said Act, or of any other Act relating to the valuation of lands and heritages in Scotland:

"The General Turnpike Act" shall mean the Act passed in the first and second years of the reign of His Majesty King William the Fourth, chapter forty-three, intituled "An Act "for amending and making more effectual the laws concerning "turnpike roads in Scotland:"

"The General Statute Labour Act" shall mean the Act passed in the eighth and ninth years of the reign of Her present Majesty, chapter forty-one, intituled "An Act for amending "the laws concerning highways, bridges, and ferries in "Scotland, and the making and maintaining thereof by "statute service, and by the conversion of statute service "into money:"

"Accountant" shall mean an accountant appointed from time to time for the purposes of this Act by one of Her Majesty's Principal Secretaries of State, who is hereby authorised to make or recall any such appointment by a writing under his hand, which shall be published in the Edinburgh Gazette:

"Locomotive" shall have the same meaning in this Act as it has in "The Locomotive Act, 1861:"

"Local newspaper" shall mean any newspaper published in the county, or in any burgh wholly or partly situated therein, or, if there be no newspaper so published, any newspaper published in a county adjoining or near thereto, or in any burgh wholly or partly situated in such adjoining county:

Where in this Act notice is required to be given by "special advertisement," such notice shall be published once in at least two local newspapers.

For ascertainment of persons entitled to act as commissioners of supply in counties comprehending detached parts of other counties.

4. With a view to ascertain the persons entitled to act as commissioners of supply under the provisions of this Act in those counties in which are included under such provisions one or more detached parts of any other county or counties, the clerk of supply of each such other county shall, *within two months* after the passing of this Act, transmit to the clerk or clerks of supply of the county or counties in which such detached part or parts is or are included

A.D. 1877.

under the provisions of this Act, a list of the persons qualified as commissioners of supply in virtue of property situated in such detached part or parts; and from time to time thereafter the clerk of supply of each such other county shall, *within one month* after making any alteration in the list of commissioners of supply as respects persons so qualified, transmit a note of such alteration to the clerk or clerks of supply of the county or counties in which such detached part or parts is or are included under the provisions of this Act.

Boundaries of burghs.

5. The boundaries of royal and parliamentary burghs for the purposes of this Act shall be the boundaries thereof as defined by the Act 2 and 3 William IV., chapter sixty-five, intituled "An Act to amend the representation of the people in Scotland;" and the boundaries of other burghs for the purposes of this Act shall be the boundaries thereof as the same are or may be ascertained, fixed, or determined for purposes relating to or including the maintenance of roads under the provisions contained in any general or local Act of Parliament.

Where the boundaries of any burgh run along a highway, the whole breadth of such highway shall for the purposes of this Act be held to be within the boundary of the burgh.

Continuance of existing Local Acts.

Continuance of existing local Acts.

6. All local Acts now in force for regulating, managing, making, maintaining, or repairing statute labour roads in any county shall, as amended by this Act, continue in force from and after the passing of this Act until this Act or the provisions of this Act relating to the consolidation of statute labour trusts shall be adopted in such county in manner herein-after provided, and no longer, unless in the meantime Parliament otherwise provides; and all local Acts now in force for regulating, managing, making, maintaining, or repairing any turnpike road situated or partly situated in any county shall, as amended by this Act, continue in force *from and after the passing of this Act* until this Act or the provisions of this Act relating to the abolition of tolls and the maintenance of turnpike roads by assessment shall be adopted in such county in manner herein-after provided, or until the end of the session of Parliament next following the expiration of *twenty-one years* from the passing of this Act, whichever of these events shall first happen, and no longer, unless in the meantime Parliament otherwise provides.

Adoption of the Act wholly or partially.

A.D. 1877.

How Act may be adopted in counties.

7. The following provisions shall have effect with regard to the adoption of this Act:

(1.) Case of counties which have obtained private Acts.

(1.) In any county in which the management of the whole turnpike roads and statute labour roads is vested under any Act or Acts in one body of trustees, such trustees may resolve to adopt this Act in place of the Act or Acts in force in such county by a resolution to that effect of not less than *two thirds* of the trustees present at a meeting called by special advertisement on not less than *ten days* notice, for the purpose of considering as to the adoption of this Act; and, if it be resolved to adopt this Act, the date of such adoption shall be held to be *the fifteenth day of May* next following the passing of such resolution; and the clerk of such trustees, on a requisition to that effect, signed by any three of the trustees, being presented to him, shall call a meeting of the trustees with a view to consider a resolution for the adoption of this Act: Provided that in the event of such resolution not being carried by the requisite majority as aforesaid, it shall not be lawful to call another meeting with a view to the adoption of this Act for *two years* thereafter:

(2.) Case of counties which have not obtained private Acts.

(2.) In any other county the commissioners of supply of such county, present at any meeting held for the purpose and called by the convener, on the requisition of any *six* commissioners, by notice by special advertisement of the object of such meeting not less than three weeks previously thereto, may resolve by a majority of not less than *two thirds* of the commissioners so present to adopt this Act, or (subject to the restriction herein-after contained) the provisions of this Act relating to any one or more of the following matters separately; that is to say, (first) the consolidation of the trusts for the maintenance and management of the turnpike roads and portions of such roads situated in such county, including the valuation of the debts affecting the same and the payment of such debts or of the interest thereon; (secondly) the abolition of the tolls leviable in respect of such turnpike roads and portions of roads, and the maintenance of such roads and portions of roads by assessment on lands and heritages; and (thirdly) the

A.D. 1877.

consolidation of the trusts for the maintenance and management of the statute labour roads and portions of such roads situated in such county, including the valuation of the debts affecting the same and the payment of such debts or of the interest thereon; and the commissioners of supply of any county in which any of such provisions of this Act have been adopted may at any subsequent time or times adopt in like manner all or any other of such provisions: Provided always, that the provisions relating to the abolition of tolls and maintenance of turnpike roads by assessment shall not be adopted separately from the provisions relating to the consolidation of turnpike trusts, including the valuation of the debts affecting such trusts and the payment of such debts or of the interest thereon: Provided also, that any such resolution shall not take effect unless confirmed by a like majority at a subsequent meeting of the commissioners, called in like manner and held not less than *two* nor more than *four* months thereafter, and that this Act or such respective provisions thereof shall not come into operation until the *fifteenth day of May* next following the confirmation of such resolution, which shall be held to be the date of adoption: Provided further, that in the event of any such resolution not being carried by the requisite majority of the commissioners present at either of such meetings, no meeting for considering as to the adoption of the same provisions of this Act shall be held until the expiration of *two years* thereafter.

Registration and publication of resolution to adopt Act.

8. After the passing of any such resolution by the road trustees of any county, or the passing and confirmation of any such resolution by the commissioners of supply of any county, the clerk of such trustees or the clerk of supply of such county (as the case may be) shall forthwith transmit a copy thereof, subscribed by him, to the sheriff clerk of such county, to be registered in the sheriff court books, and the sheriff clerk shall register the same accordingly; and notice of such resolution shall also be forthwith published by the clerk of such trustees or the clerk of supply (as the case may be) by special advertisement, and transmitted by him to the clerk of every burgh situated wholly or partly within such county, and to the clerk of every body of road trustees (if any) affected thereby.

A.D. 1877.

When provisions of this Act adopted in any county, the burghs therein having a population under thirty thousand shall form part of the county as respects the roads to which such provisions relate, subject to powers of separation in certain cases.

9. From and after the date of adoption as aforesaid in any county (first) of this Act, or (secondly) of the provisions of this Act relating to the consolidation of turnpike trusts (with or without abolition of tolls), or (thirdly) of the provisions of this Act relating to the consolidation of statute labour trusts, every burgh and portion of a burgh situated in such county, excepting burghs having respectively a population of *thirty thousand* or upwards according to the census taken in the year one thousand eight hundred and seventy-one, shall, as respects the property, maintenance, and management (in the first case) of all the turnpike roads and statute labour roads and portions of such roads, or (in the second case) of all the turnpike roads and portions of such roads, or (in the third case) of all the statute labour roads and portions of such roads, within such burgh, or portion of a burgh, and the assessments to be levied for such maintenance and management, but subject always to the provisions herein-after contained, form part of such county until separated therefrom in the cases, to the extent, and in the manner hereafter provided.

Burghs having a population of thirty thousand or upwards to manage and maintain their own roads.

10. Subject to the provisions of this Act, the local authority of every burgh having a population of *thirty thousand* or upwards, according to the census taken in the year one thousand eight hundred and seventy-one shall, from and after the *fifteenth day of May* next following the passing of this Act, be vested with and have the entire management and control of all the turnpike roads and statute labour roads and portions of such roads, situated within such burgh, and shall maintain the same, and shall with respect thereto possess the same powers, rights, and privileges (except the rights of levying tolls or statute labour conversion money), and be subject to the same liabilities, as the trustees in whom such roads and portions of roads are now vested respectively possess and are liable to with respect to the same, and as such local authority possesses and is liable to with respect to any streets within such burgh; and thereafter no tolls shall be leviable within such burgh, nor shall any statute labour conversion money or county road assessment be leviable therein, except any arrears of such conversion money which may have been imposed in respect of the maintenance of any of such roads for any period previous to the said *fifteenth day of May*: Provided always, that if any lease now current of the tolls upon any such turnpike roads or portions of roads shall not have expired on the said *fifteenth day of May* next following the passing of this Act, the operation of this section shall be postponed until the expiration of such lease as respects the roads and portions of roads to which such lease relates.

A.D. 1877.

Other burghs having a population of ten thousand or upwards may resolve to manage and maintain their own roads.

11. Subject to the provisions of this Act, the local authority of any burgh having a population of *ten thousand* or upwards according to the most recent census, other than a burgh having a population of thirty thousand or upwards according to the census taken in the year one thousand eight hundred and seventy-one, may at any time, if such authority by a majority of not less than two thirds of the members thereof present at a meeting called for the purpose by special advertisement so resolve, assume the entire management and control of all the turnpike roads and statute labour roads and portions of such roads situated within such burgh, from and after the *fifteenth day of May* next following the expiration of *three months* after the intimation, publication, and registration of such resolution in manner herein-after provided; and from and after the said *fifteenth day of May* the said local authority shall maintain the said roads and portions of roads, and shall with respect thereto possess the same powers, rights, and privileges (except the rights of levying tolls, or statute labour conversion money, or county road assessment), and be subject to the same liabilities, as the trustees in whom such roads and portions of roads are vested immediately before the said date then respectively possess and are liable to with respect to the same, and as such local authority then possesses and is liable to with respect to any streets within such burgh; and thereafter no tolls shall be leviable within such burgh, nor shall any statute labour conversion money or county road assessment be leviable therein, except any arrears of such conversion money or county road assessment which may have been imposed in respect of the maintenance of any of such roads for any period previous to the said *fifteenth day of May:* Provided always, that when any such resolution has been adopted the town clerk of such burgh shall, not less than three months previously to the *fifteenth day of May* on which the same is to come into operation as aforesaid, intimate such resolution in writing to the clerk of the trustees of every such turnpike road and statute labour road, or to the clerk of the county road trustees in whom the management of any such road is vested, and publish the same by special advertisement, and transmit a copy thereof, subscribed by him, to the sheriff clerk or sheriff clerks of the county or counties in which such burgh is situated, to be registered in the sheriff court books of such county or counties, and such sheriff clerk or sheriff clerks shall register the same accordingly: Provided also, that if any lease of the tolls upon any such turnpike roads or portions of roads current at the date of the intimation, publication, and registration of such resolution shall not have expired on the said *fifteenth day of May*, the operation of such resolution shall be postponed until the expiration of such lease as respects the roads and portions of roads to which such lease relates.

A.D. 1877.

Consideration to be paid to road trustees.

12. The local authority of every burgh having a population of *thirty thousand* or upwards, according to the census taken in the year one thousand eight hundred and seventy-one, and the local authority of every other burgh which under the provisions of this Act shall have assumed the management of the turnpike and statute labour roads and portions of such roads situated within such burgh, shall, from and after the date on which such local authority becomes vested under the provisions of this Act with the management of the portions situated within such burgh of any turnpike and statute labour roads (which date is herein-after called the date of vesting), pay to the trustees who at the date of vesting and from time to time thereafter have the charge of the remaining portions of such respective roads such annual sum, in consideration of the loss of tolls and statute labour conversion money or county road assessment, and of the over-average cost of maintaining the roads around such burgh, as shall, before or as soon as may be after the date of vesting, be agreed upon between such local authority and the trustees who have then the charge of such remaining portions of roads, or (failing such agreement) as shall be determined by arbitration in manner herein-after provided to be equitable in all the circumstances of the case: Provided that any such agreement made with trustees, other than county road trustees, shall require the consent of the commissioners of supply of the county or counties in which such remaining portions of roads are situated. If within *two months* after the date of vesting the amount of the annual sum to be paid as aforesaid is not agreed upon in manner herein-before provided, the trustees claiming payment of such sum may name one person to act as arbiter, and may require the local authority from whom such payment is claimed to name another person to act as arbiter, and the arbiters so named shall forthwith appoint an oversman, or if they cannot agree in such appointment, or if either party fail to appoint an arbiter, an oversman shall be appointed by the Lord Ordinary on the Bills on the application of either party; and the oversman shall be present during all the proceedings before the arbiters, and shall determine any matter upon which they differ; or if either party fail to appoint an arbiter, or if either arbiter fail to proceed under the arbitration, the other arbiter and the oversman may proceed with and determine the same; and the decision of the arbiters, or when they differ of the oversman, or if either party fail to appoint an arbiter or if either arbiter fail to proceed with the arbitration the decision of the other arbiter and of the oversman, shall be final, and not subject to review in any manner or upon any grounds whatever.

A.D. 1877.

Burghs having a population of ten thousand or upwards may apply for provisional orders for removal of toll-bars.

13. The local authority of any burgh having a population according to the most recent census of *ten thousand* or upwards, and situated within a county or counties in which tolls have not been abolished, may at any time *after the passing of this Act* (but not oftener than once in *five years*), if they by a majority of not less than *two thirds* of the members present at a meeting called for the purpose by special advertisement so resolve, present an application to one of Her Majesty's Principal Secretaries of State for a provisional order for the removal of all or any of the toll-bars upon the turnpike roads around the said burgh to such distance beyond the boundaries thereof as may be agreed upon or fixed as herein-after mentioned, upon payment by such local authority to the trustees, who at the date of such removal, and from time to time thereafter, have the charge of the roads on which such toll-bars were situated, of such annual sum, in consideration of such removal, as shall have been agreed upon between such local authority and the trustees who at the date of such application have the charge of the said roads; provided that any such agreement made with trustees, other than county road trustees, shall require the consent of the commissioners of supply of the county or counties in which such toll-bars were situated, or (failing such agreement) as shall be determined by or under the provisions of such provisional order to be equitable in all the circumstances of the case: Provided always, that the county road trustees receiving any such payment shall, if their county be divided into districts as herein-after provided, hold and apply such payment for behoof of the district in which such burgh is situated.

Procedure in respect to provisional orders.

14. Upon the receipt of any such application for a provisional order the Secretary of State shall cause notice thereof to be given by the applicants to the clerk of any county road trustees, the clerk of any turnpike road trustees, the clerk of supply of any county, and the clerk of any burgh, affected thereby, and may direct a local inquiry to be held in respect of the matters mentioned in the application after giving *fourteen days* notice of the time, place, and subject of the inquiry.

After receiving the report made upon such inquiry the Secretary of State may issue a provisional order under his hand and seal of office in relation to the matters mentioned in the application, either in accordance with the prayer thereof or with such modifications or alterations as may appear to him to be requisite.

A provisional order made in pursuance of this section shall not be of any validity unless and until it has been confirmed by Act of Parliament; and it shall be lawful for the Secretary of State, as soon as conveniently may be, to obtain such confirmation; and

A.D. 1877.

the Act confirming such provisional order shall be deemed to be a Public General Act of Parliament.

All costs, charges, and expenses incurred by the Secretary of State in relation to such provisional order, to such amount as the Secretary of State thinks proper to direct, and all costs, charges, and expenses incurred in promoting such provisional order, and also in promoting any Bill confirming such order before a committee of either House of Parliament, except so far as otherwise determined by the Secretary of State or such committee, shall, to such amount as may be allowed by the Secretary of State, be a charge against the local authority applying for such order; and the Secretary of State may give such directions as he thinks fit as to the parties by whom the reasonable costs, charges, and expenses properly incurred in opposing such order should be paid, and all such costs, charges, and expenses shall be paid accordingly to such persons, in such manner, and at such times, and either in one sum or by instalments, as the Secretary of State may order, with power to him to direct interest to be paid, at such rate not exceeding *five pounds in the hundred* by the year as he may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

The court of session may, on the application of the Lord Advocate on behalf of the Secretary of State, or on the application of any person interested, interpone their authority to any order made by the Secretary of State under this section, and grant decree conform thereto, upon which execution and diligence may proceed in common form.

Costs to be awarded in certain cases in respect to Bills for confirming such orders.

15. When any Bill for confirming a provisional order under the preceding section is referred to a committee of either House of Parliament upon the petition of any person opposing such Bill, the committee shall take into consideration the circumstances under which such opposition was made to the Bill, and whether such opposition was or was not justified by such circumstances, and may award costs accordingly, to be paid by the promoters or the opponents of the Bill, as the committee may think just; and the committee shall find and determine against what funds such costs shall be chargeable.

Any costs under this section may be taxed and recovered as if the Bill for confirming such provisional order were a Private Bill.

Consolidation of trusts.

16. From and after the date of adoption in manner aforesaid in any county (first) of this Act, or (secondly) of the provisions of this Act relating to the consolidation of turnpike trusts (with or without abolition of tolls), or (thirdly) of the provisions of this

A.D. 1877.

Act relating to the consolidation of statute labour trusts, then (in the first case) all the turnpike roads and statute labour roads and portions of such roads, or (in the second case) all the turnpike roads and portions of such roads, or (in the third case) all the statute labour roads and portions of such roads, within such county, and within the burghs and portions of burghs situated therein, except those burghs the management of the roads in which shall have become vested in the local authorities thereof under the provisions of this Act, shall form the subjects of one trust, with such separate district management as may be prescribed by the county road trustees of such county appointed under this Act; and (except as in this Act otherwise provided) all the roads, bridges, lands, buildings, works, rights, interests, moneys, property, and effects, rights of action, claims, and demands, powers, immunities, and privileges whatever, including the power of levying tolls on turnpike roads where tolls have not been abolished, vested in or belonging to the trustees of any such roads and portions of roads becoming highways as aforesaid, within such county and burghs and portions of burghs, except as aforesaid, shall by virtue of this Act be transferred to and vested in the county road trustees appointed under this Act, who shall manage and maintain, in manner herein-after provided, the roads and portions of roads so vested in them, and shall, subject to the provisions herein-after contained with respect to the allocation of debts between two or more counties and between counties and burghs, be liable in all the debts, liabilities, claims, and demands in which the trustees of such roads and portions of roads so vested in them are at the date of such adoption liable under any general or local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, extinguished, or reduced: Provided that, when this Act shall have been adopted in any county, or when the provisions of this Act relating both to the consolidation of turnpike trusts (whether with or without abolition of tolls) and to the consolidation of statute labour trusts shall have been adopted in any county, whether at the same time or at different times, the turnpike roads and statute labour roads and portions of such roads within such county, and within the burghs and portions of burghs situated therein, except as aforesaid, shall form the subjects of the same trust, and be managed by the same county road trustees and county road boards.

Roads situated in more than one county.

17. Where any turnpike road or statute labour road is situated in more than one county, the portion thereof situated in each such county (including any burghs and portions of burghs therein) shall, so far as respects the adoption in any such county of this Act, or of

the provisions of this Act relating to the consolidation of turnpike trusts (whether with or without abolition of tolls), or to the consolidation of statute labour trusts, and the vesting and disposal of the lands, buildings, and works belonging to such road and situated in such county, be regarded as separate from the remainder of such road; and this Act or the provisions of this Act so adopted shall apply to the portion of such road situated in the county in which this Act or the aforesaid provisions of this Act shall have been so adopted, as if no part of the road were situated in any other county: Provided always, that the debts affecting the trust under which such road is managed, and the assets (other than lands, buildings, and works) of such trust, shall be allocated, borne, and divided in manner herein-after provided.

Abolition of tolls.

18. When this Act, or the provisions of this Act with respect to the abolition of tolls and the maintenance of turnpike roads by assessment, shall have been adopted in any county, all tolls leviable within such county, and within the burghs and portions of burghs situated therein, so far as not previously abolished under the provisions herein-before contained, shall be abolished from and after the date of such adoption, or if any of such tolls are then under lease from and after the date or respective dates next following the date of such adoption on which the lease or leases of such tolls shall expire, any Act or Acts to the contrary notwithstanding; and all turnpike roads within such county and burghs and portions of burghs shall thereupon become and thereafter be highways, and open to the public free of tolls.

Abolition of statute labour conversion money.

19. When this Act or the provisions of this Act with respect to the consolidation of statute labour trusts shall have been adopted in any county, the exaction of statute labour, and of money by way of conversion thereof, and of the assessment called bridge money, within such county and within the burghs and portions of burghs situated therein, shall cease and determine from and after the date of such adoption, except as respects any arrears of conversion money or bridge money previously imposed and then unpaid, any Act or Acts to the contrary notwithstanding.

Appointment of County Road Trustees, Board, and Committees.

Appointment of county road trustees.

20. The following persons shall be the county road trustees for each county in which this Act or any of the provisions of this Act shall be adopted, viz.:—

(1.) All persons being commissioners of supply of the county, excepting those persons who are commissioners only ex-officiis;

A.D. 1877.

(2.) One person appointed at pleasure by and under the seal of every corporate body assessed for the purposes of this Act upon an annual valuation of eight hundred pounds or upwards, as appearing from the valuation roll of the county;

(3.) One person to be elected annually out of their own number by the parochial board of each parish wholly or partially situated in the county; and the persons so elected shall be deemed to be elected trustees;

(4.) Where the management and maintenance of the turnpike roads and statute labour roads within any burgh situated wholly or partly in the county are vested in the county road trustees, the provost or chief magistrate and one other member of the town council (to be elected by such town council) of any such burgh, being a royal or parliamentary burgh, having a population according to the most recent census of *five thousand* or upwards, and the chief magistrate and one of the other commissioners of police (to be elected by such commissioners) of any such burgh, not being a royal or parliamentary burgh, having such a population, and the provost or chief magistrate of any such burgh having a population according to such census of less than *five thousand;* and all such persons shall be deemed to be elected trustees.

Trustees designated and incorporated.

21. The county road trustees of each county shall be a body corporate, with perpetual succession and a common seal, under the name of the county road trustees of the county of which they are such trustees, and under that name they may sue and be sued, and may purchase, hold, and dispose of lands and other property for the purposes and subject to the provisions of this Act.

Appointment of county road board.

22. The trustees shall at their first general meeting herein-after mentioned, and thereafter at each annual general meeting, appoint the county road board, consisting of not more than *sixty* of the trustees, of whom not less than *one fourth* and not more than *one third* shall consist of elected trustees, and the chairman of the trustees elected as herein-after provided shall ex-officio be an additional member of the board and chairman thereof; and the board shall have and may exercise all the powers, rights, and privileges conferred on the trustees by this Act, except the power of making an assessment, and of dividing the county into districts, and except in so far as the trustees shall otherwise expressly provide, but shall be subject in all respects to any requisitions, orders,

regulations, or instructions which may from time to time be issued by the trustees in accordance with the provisions of this Act. A.D. 1877.

County may be divided into districts and district committees appointed.

23. The trustees may from time to time, at a meeting called for the purpose by special advertisement, divide the county (including any burghs and portions of burghs situated therein in which there are any turnpike roads or statute labour roads subject to their management) into districts for the management of the highways and the execution of the other purposes of this Act within such respective districts; and shall define the limits and boundaries of such districts, and may from time to time alter such limits and boundaries, and the board shall annually appoint for each district such of their number as they think fit to be a district committee, and name one of them to be chairman thereof, and not less than *one fourth* and not more than *one third* of the district committee so appointed shall consist of elected trustees representing parishes or burghs within the district, as herein-before provided.

Occasional vacancies to be supplied.

24. If any elected trustee, or any member of the board or of a district committee, or the chairman of a district committee, shall resign his office (which he may do by any writing under his hand, addressed to the chairman of the trustees), or shall refuse to act, or shall die, or become disqualified, the board, if they think fit, may appoint a person, subject to the provisions herein-before contained as to the constitution of the board and of the district committees respectively, to supply his place, and the person so appointed shall remain in office so long only as the person in whose room he was appointed might have held office.

Failure to elect not to invalidate acts of trustees.

25. If the town council of any royal or parliamentary burgh, or the commissioners of police of any other burgh having a population according to the most recent census of *five thousand* or upwards, or the parochial board of any parish, or any corporate body as herein-before mentioned, shall fail to elect or appoint a person to be a trustee for the purposes of this Act, or if any person elected by such town council or commissioners of police or parochial board or appointed by such corporate body to be a trustee, or any other trustee, shall refuse to act, or shall resign his office, or die, or become disqualified, the acts and proceedings of the remaining trustees, whether acting as trustees or as members of the board or of a district committee, shall nevertheless be deemed to be the acts and proceedings of the trustees, or of the board or district committee, as the case may be, and shall be as valid and effectual as they would have been if such failure, refusal, resignation, death, or disqualification had not occurred.

A.D. 1877.

Meetings of Trustees, Board, and Committees.

Time and place of general meetings of the trustees.

26. The first general meeting of the Trustees shall be called by the convener of the county by special advertisement, and shall be held not later than *three months* after the date of adoption in such county of this Act, or of any of the provisions of this Act, at such time and place as such convener shall appoint; and another general meeting of the trustees shall be held on the *thirtieth day of April* immediately following, or on such other day as may be resolved on at the first general meeting of the trustees, and at such place as the trustees may appoint; and thereafter an annual general meeting of the trustees shall be held on the *twenty-ninth day of September* in each year, or on such other day as may from time to time be resolved on at any general meeting of the trustees, and at such place as the trustees may from time to time appoint; and at the said first general meeting, and at every annual general meeting, the trustees present shall elect one of their own number to be chairman of the trustees, and in the event of an equal number of votes being given for two candidates, the candidate having or representing the largest valuation in the county, as appearing on the valuation roll, shall be held to be elected; and such chairman shall hold office until the annual general meeting next succeeding his appointment or until his successor is appointed, and may be re-elected on the expiration of his first or other period of office; and the chairman shall, when present, preside at all meetings of the trustees.

Meetings of board and district committees.

27. The time and place of the first meeting of the board shall be fixed by the trustees, and the time and place of any subsequent meeting may be fixed by the board itself; and the time and place of the first meeting of each district committee shall be fixed by the board, and the time and place of each subsequent meeting may be fixed by such committee; without prejudice to the right of adjournment or of holding special meetings herein-after provided.

Quorum at meetings of trustees, board, and district committees.

28. The trustees shall at their first meeting determine what number of trustees shall be requisite to constitute a quorum at meetings of the trustees and of the board and of the several district committees respectively; and it shall be in the power of the trustees to alter such quorum from time to time, as they may think fit; but no such alteration shall take effect until after the expiration of *three months* from the date of being made, and in the case of a district committee from the date of being communicated in writing by the county road clerk to the chairman of such committee.

A.D. 1877.

Regulations as to meetings and proceedings of trustees, board, and district committees.

29. The following provisions shall be applicable to the meetings and proceedings of the trustees, the board, and the district committees respectively, until altered by the trustees; but the trustees may at any annual meeting alter the same, and make new regulations for the conduct of the meetings and proceedings of the trustees, the board, and the district committees respectively:

(1.) Special meetings of the trustees or of the board may be called by the chairman, or in the event of his illness, death, resignation, or absence from the county by the clerk, at any time he may think fit, by special advertisement and by circular sent through the post to each member of the board, stating the object and the place and date of such meeting; and on a requisition stating the object of such special meeting, and signed by five trustees in the case of a special meeting of the trustees, and by three members of the board in the case of a special meeting of the board, being presented to the chairman, or in the event of his illness, death, resignation, or absence from the county to the clerk, the chairman or clerk, as the case may be, shall call a meeting of the trustees or of the board, as the case may be, by special advertisement and by circular sent through the post to each member of the board, stating the object and the place and date of such meeting: Provided that no special meeting of the trustees or of the board shall be called on less than *seven days* notice:

(2.) Special meetings of any district committee may be called at any time by the district clerk, on the order of the chairman of the committee, or of any *two* members of the committee, by circular stating the object and the place and date of such meeting, addressed to each member of the committee, and forwarded by post not less than *four days* before such meeting:

(3.) Any meeting, general or special, of the trustees, or of the board or district committee, may be adjourned to a time and place to be specified in the minutes of such meeting; and in the event of a quorum not being present at any general or special or adjourned meeting, the clerk of the meeting shall, in the case of meetings of the trustees or of the board by special advertisement and circular, and in the case of district committees by circular, in the manner and with the number of days notice herein-before provided in respect to meetings of those bodies respectively, call

A.D. 1877.

another meeting, to be held at the same hour and place on any day within *three weeks* after the day originally fixed for such meeting:

(4.) Any assessment by this Act authorised to be imposed at any general or special meeting of the trustees, and any other business appointed by this Act to be transacted at any general or special meeting of the trustees, or of the board or of any district committee, may be transacted or imposed at any adjourned meeting thereof: Provided that no business shall be brought before or transacted at such adjourned meeting which was not brought or appointed to be brought before the original meeting which was so adjourned:

(5.) No motion in regard to any matter or business not mentioned in the advertisement or special advertisement or circular calling any meeting shall be competent unless notice of the same shall have been given at the immediately preceding meeting (not being a special or adjourned meeting), or by circular sent through the post not less than *six days* before the meeting in the case of a meeting of the trustees or of the board, and not less than three days before the meeting in the case of a meeting of a district committee, and addressed to every person entitled to be present and vote thereat:

(6.) Where the business before any meeting relates to the valuation or payment of debts, or of the interest thereof, or to the mode of providing therefor, or to the construction of new roads or bridges, the assessments to provide for the payment or cost of which are by this Act laid on proprietors only, no elected trustee shall be entitled to vote in regard thereto, or in regard to such assessments:

(7.) No person shall have more than *one vote* at any meeting under this Act, although he may have more than one qualification for voting, except as herein-after provided in the case of the chairman of any meeting.

Chairman to be elected in absence of ordinary chairman.

30. In the absence of the chairman of the trustees or of the board or of any district committee, at any meeting thereof, any person elected by the majority of the trustees or members present at such meeting shall preside thereat; and in case of an equality of votes, the trustee or member present and proposed as chairman, having or representing the largest valuation as shown by the valuation roll in the county or district as the case may be, shall preside at such meeting, and in all other cases of equality of votes the

chairman of the meeting shall have a casting as well as a deliberative vote. A.D. 1877.

Board and district committees may appoint sub-committees.

31. It shall be lawful for the board or for any district committee to appoint from time to time any number of their members respectively to be committees or sub-committees for the purposes of this Act, and to delegate to such committees or sub-committees the exercise of all or any of their powers, subject to such orders and directions, not inconsistent with the provisions of this Act, as they may respectively prescribe, and to make such rules as they may respectively think fit for regulating the proceedings of such committees or sub-committees.

District committees and board to make reports.

32. Each district committee shall annually make a report of their proceedings to the board, with detailed accounts of their receipts and expenditure, and shall make reports on such other matters at such times and in such manner as may be prescribed by the trustees or the board; and the board shall before each annual general meeting of the trustees make a report of their proceedings to the trustees, with detailed accounts of their receipts and expenditure (if any), and shall make reports at such other times on such matters as may be prescribed by the trustees; and along with such annual report the board shall lay before the trustees the reports and accounts of the district committees respectively.

Appeal from decision of district committee.

33. Any person who shall object to or think himself aggrieved by the decision or resolution of any district or other committee or of any sub-committee may appeal, at any time within *fourteen days* after such decision or resolution, to the board, whose determination therein shall be final: Provided that such appeal shall not prevent the execution of any of the powers of this Act in any matter affecting any other person not being a party in such appeal.

Appointment of Officers.

Appointment of county officers.

34. The board may appoint a clerk who shall also be clerk to the trustees, and shall be called the county road clerk, a treasurer who shall be called the county road treasurer, a surveyor who shall be called the county road surveyor, and a collector who shall be called the county road collector, and, if it shall be found expedient, may appoint more persons than one to execute any of the above-named offices, or may appoint one person to execute two or more of such offices, and may also appoint such other officers and servants as they may think necessary for carrying this Act into execution; and such officers and servants shall perform the duties from time to time prescribed by the trustees or the board, and shall be subject to

A.D. 1877.

removal at any time by the trustees or the board, unless in so far as the power of removal may be modified by special written agreement, and shall find such security as the trustees or the board may require.

Appointment of district officers.

35. Each district committee may from time to time appoint a district clerk and a district treasurer (it being competent to appoint one person to hold both offices), and a district surveyor, and prescribe their or his duties; and, subject to the approval of the board, the district committee may fix the salaries to be paid to such respective officers, and the security to be taken from them for the discharge of their duties, where such security is required to be taken; and every such officer shall be subject to removal at any time by the district committee, unless in so far as the power of removal may be modified by special written agreement approved of by the board: Provided that it shall be competent for any district committee to appoint as district clerk, or as district treasurer, or as district clerk and treasurer, or as district road surveyor, any of the officers appointed by the trustees, or by the board, or by another district committee. Every district road surveyor shall be subject to the reasonable orders of the county road surveyor.

Salaries to be fixed by the board.

36. Subject to the approval of the trustees, the board shall fix the salaries and allowances to be paid to the several officers and servants appointed and employed by the trustees and the board; and such salaries and allowances, and all other necessary expenditure in the execution of this Act, shall be paid out of the several funds and revenues at the disposal of the trustees, in such manner, at such times, and in such proportions as the trustees shall from time to time fix and determine.

General Management in Counties and Burghs.

List of highways to be made up. Alteration of list.

37. The board shall at their first meeting, or at an adjournment thereof, make up a list of the turnpike roads and statute labour roads under their management and control; but no road shall be put on such list unless it was at the date of the adoption in the county of this Act, or of the provisions of this Act, relating to the consolidation of turnpike trusts, or to the consolidation of statute labour trusts (as the case may be), in use to be maintained out of funds derived from tolls or statute labour conversion money or the assessment called bridge money. The roads on such list, and no other, shall be maintained and repaired out of the assessments levied by the county road trustees under this Act; and no alteration

on or addition to such list shall be made except at an annual general meeting of the trustees. A.D. 1877.

Highways may cease to be such, and other roads may become highways.

38. The trustees may, at any annual general meeting, declare that any highway shall cease to be a highway within the meaning and for the purposes of this Act, whether another highway has been substituted therefor or not; or that any road or bridge which was not maintained out of funds derived as aforesaid shall be a highway within the meaning and for the purposes of this Act; but such declaration shall not be competent unless the county road clerk shall have given notice of the intention to propose the same by special advertisement, and by printed notices affixed to the door of the parish church of every parish in which any part of such highway, road, or bridge is situated, and also affixed in some conspicuous place at each end of such highway, road, or bridge, for at least *one month* before the date of the meeting at which such declaration is intended to be made: Provided always, that it shall not be lawful for the trustees to declare any road to be a highway unless the same shall be in all places *twenty feet* in width of clear passable road, exclusive of the bank, ditch, and fence on either side thereof, twenty feet being hereby declared to be the minimum legal width of any road, except in the case of any road of less width maintained by any turnpike road trustees or statute labour road trustees at the date of the adoption in the county of this Act, or of the provisions of this Act relating to the consolidation of turnpike trusts, or to the consolidation of statute labour trusts, as the case may be.

A road ceasing to be a highway may be shut up.

39. After any road has, as herein-before provided, ceased to be a highway the trustees may direct it to be shut up, and give such notice that it has been shut up as they shall think fit, and may exchange the ground occupied by such road, or any part thereof, with the owner of any adjoining land, for any other land which they may require for the purposes of a highway, or they may sell and dispose of such ground: Provided always, that they shall first offer the said ground to the person or persons whose lands immediately adjoin thereto, at a price to be fixed, failing agreement, by a sole arbiter, to be named by the sheriff on the application of either party, and if such person or persons refuse to purchase the ground as so offered the trustees may proceed to sell the same as they think fit; and the price shall be applied in the first place in or towards the extinction of any debt valued as herein-after provided affecting the turnpike roads or statute labour roads (as the case may be) of which such road under the provisions of this Act

A.D. 1877.

formed part, and the surplus, if any, may be applied to the general purposes of this Act within the district in which such road is situated.

Any determination of the trustees under this section or the preceding section shall be final and conclusive, and not subject to review in any court or by any process or proceeding whatsoever, unless any three or more of the trustees who shall be dissatisfied with such determination shall at any time within fourteen days after the date thereof appeal to the sheriff, who shall hear and determine the appeal in a summary way, and the decision of the sheriff shall be final and not subject to review, and the expenses of such appeal shall be in the discretion of the sheriff.

Toll-houses to be first offered to adjoining proprietors.

40. The trustees may pull down and remove, or may sell any toll-house or other building belonging to them, but before selling such toll-house or other building they shall offer the same to the person or persons whose lands immediately adjoin thereto, in the same manner, and subject to the same conditions, as are provided in the preceding section with reference to the ground of a road which has ceased to be a highway.

Provision for footpaths.

41. It shall be lawful for the board, or for a district committee subject to the approval of the board, to make, and if made to maintain, footpaths on the side or sides of any highway.

Maintenance and Repair of Highways and Assessments therefor.

Surveyor to report on condition of highways, and estimate cost of maintenance.

42. The surveyor shall, on or before *the thirtieth day of March* in each year, make up and deliver to the county road clerk, and (where the county has been divided into districts) to the clerks of the district committees respectively for the use of such committees:

(1.) A report of the condition of the highways within the county and within each district thereof, as the case may be (including the burghs and portions of burghs situated in such county or district), so far as such highways are under the management of the board;

(2.) A specification of works and repairs proposed to be executed thereon; and

(3.) An estimate of the sums required for the purposes of such highways within the county and each district thereof (including as aforesaid), as the case may be, for the year from *the fifteenth day of May* immediately following to the *fifteenth day of May* in the year succeeding; and the district committees, if any, shall, on or before the fifteenth day of April in each year, consider

such reports and estimates, and shall immediately transmit the same, together with their recommendations, if any, to the county road clerk, to be by him laid before the annual meeting of the board.

Board to meet and consider reports.

43. The board shall hold an annual meeting, on such day between the *fifteenth day of April* and the *fifteenth day of May* in each year as they may fix, or at such other time as the trustees in general meeting may resolve upon, for the purpose of considering the reports, specifications, and estimates of the surveyor, and relative recommendations of the respective district committees, if any, and shall consider and review the same, and give such orders as may seem necessary in respect thereto, and their decision shall be final.

Roads or highways may be shut up for repairs.

44. The board or any district committee, on a written report from the surveyor or district surveyor that it is necessary to shut up for a limited period any highway for the purpose of repairing the same, may from time to time authorise the shutting up of such highway for such period as they may deem necessary: Provided always, that notice of the intention so to shut up a highway shall be given by advertisement in a newspaper circulating in the county or district within which such highway is situated at least fourteen days before such highway shall be so shut up: Provided nevertheless, that, upon a written report by the surveyor or district surveyor that any highway has become or is about to become dangerous, it may be shut by up the written order of any two members of the board or district committee without any previous notice; but notice shall be immediately given, by advertisement as aforesaid, that it has been shut up.

Assessments in counties for management, maintenance, and repair.

45. The amount required for the management, maintenance, and repair of the highways under the management of the board within each county, or where the county has been divided into districts within each district (including the burghs and portions of burghs situated in such county or district, the management and maintenance of the turnpike and statute labour roads and portions of roads in which burghs and portions of burghs are not under the provisions of this Act vested at the time in the local authorities thereof respectively,) along with the proportion applicable to each district (where the county has been divided into districts) of the general expenses of executing this Act as allocated by the trustees, shall be levied by the trustees by an assessment to be imposed at a uniform rate, except as herein-after provided, on all lands and heritages within such county or district (including as aforesaid), as the case may be; and such assessment shall be paid,

A.D. 1877.

one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which the same is imposed, except in cases where the name of the tenant or occupier is not set forth in the valuation roll, in which case the whole of the assessment imposed on such lands and heritages shall be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier; provided that tenants occupying lands and heritages during a part only of any year for which such assessment has been imposed, and paying such assessment for the whole of such year, shall have a right of relief against the tenants occupying such lands and heritages for any other part of such year, for the proportion of the assessment applicable to such last-mentioned period.

Maintenance of bridges in two counties or districts.

46. Where any bridge is situated partly in one county or district and partly in another county or district the expense of maintaining such bridge shall be borne by the trustees of the roads of which such bridge forms part in equal shares.

Assessment in burghs for maintenance and repair.

47. The amount required for the management, maintenance, and repair of the streets and roads within any burgh (other than streets and roads which individuals are bound to maintain at their own expense), so far as such streets and roads are not maintained by the county road trustees under the provisions of this Act, or by any turnpike or statute labour road trustees, and where there is no rate or assessment now levied for the maintenance and repair of streets or roads within such burgh, shall be levied by the burgh local authority, at such rates as may be necessary for the purpose, by an assessment to be imposed and levied at a uniform rate on all lands and heritages within the burgh; and such assessment shall be paid, except as otherwise expressly provided, one half by the proprietor and the other half by the tenant or occupier of the lands and heritages on which such assessment is imposed, unless where the name of the tenant or occupier is not set forth in the valuation roll, in which case the whole of the assessment imposed on such lands and heritages shall be levied from and paid by the proprietor, who shall be entitled to recover the half thereof from the tenant or occupier.

Former modes of assessment may be retained in certain burghs.

48. Where in any burgh the management and control of any streets and roads within the same, and the power to levy any rates or assessments in respect thereof, have been vested in the burgh local authority, in virtue of any general or local Act, and are not vested in the county road trustees under the provisions of this Act, it shall be lawful for the burgh local authority to continue to impose

and levy such rates or assessments; and the amount required for defraying the expense of maintaining and managing any streets and roads under the provisions of this Act within such burgh shall be included in the sums for payment of which such rates or assessments may be imposed and levied: Provided always, that such burgh local authority may, at any meeting called for the purpose on not less than *one month's* notice by special advertisement, pass a resolution that such rates and assessments shall, from and after a date to be fixed in such resolution, thenceforth cease to be levied; and in the event of such resolution being carried by a majority of votes, the maintenance and repair of such streets and roads, and all expenses connected therewith, and with the execution of this Act within such burgh, shall, from and after such date, be provided for by a uniform assessment within the burgh as hereinbefore provided.

Provision for special rating of mines, &c.

49. And whereas in many counties and burghs there are in operation mines, quarries, manufactories, works, coaching, carting, and horse-hiring establishments, and other undertakings, the use of the roads in connexion with which is very great, and the expenditure on maintenance and repair caused thereby may be greatly in excess of the amount of assessment levied according to the rental of the subjects owned or occupied in connexion therewith, as entered in the valuation roll; and whereas it is just and expedient to provide for the special rating of such subjects in order to cover the extra cost of maintenance and repair of highways so caused: Be it therefore enacted, that it shall be lawful for the trustees of any county, or the local authority of any burgh, on obtaining a certificate from the county road surveyor, or district road surveyor, as the case may be, in the case of any highways within the landward part of the county, or from the superintendent of streets, or other officer having charge of the streets or roads of any burgh, in the case of any roads or streets within such burgh, setting forth that the injury done to such highways, streets, or roads in the course of any year by the traffic arising from or connected with any mine, quarry, manufactory, work, coaching, carting, or horse-hiring establishment, or other undertaking, has exceeded the amount of assessment by this Act authorised on the subjects owned or occupied in connexion therewith, to apply to the sheriff for a special rating of such subjects, and such application shall be heard in a summary manner; and on hearing parties the sheriff shall fix and determine the amount at which such subjects shall be rated for payment of the assessments by this Act authorised: Provided

A.D. 1877.

always, that in determining such rating the sheriff shall take into consideration the whole circumstances of the case, and in particular the amount and character of the traffic arising or connected as aforesaid, and passing over the said highways, streets, or roads, or any of them: Provided further, that the determination of the sheriff shall be final, but that it shall be in the power of the trustees or burgh local authority, or of the owner or occupier of such subjects, to apply to the sheriff in the manner herein-before prescribed for readjustment of such rating once in every *three years*.

Minerals having direct railway connexion with public railways or canals to be rated on one fourth of their annual value, subject to special rating as last provided.

50. The annual value of all mines and minerals which are connected directly, or by private railways or canals, or by railway sidings, with any railway or canal constructed or maintained under the authority of any Act of Parliament, shall for the purposes of all assessments under this Act, but subject to the provisions of the immediately preceding section of this Act, be held to be the nearest aggregate sum of pounds sterling to *one fourth* part of the annual value thereof as entered in the valuation roll.

Locomotives to be licensed.

51. No locomotive shall be placed upon or shall move along any highway within any county or district without a license from the board or from the district committee; and the board may make regulations as to the terms on which such licenses may be granted, including the fees to be paid for such licenses, the time during which they are to be in force, and any other particulars which the board may think fit to direct; and if any locomotive is placed upon or moves along any such highway without such license, the owner of such locomotive shall be liable to a penalty *equal to double the amount which he would have paid for such license, with expenses.*

Construction of new Roads and Bridges.

New roads and bridges may be constructed by the board, and assessed for upon proprietors.

52. The board, subject to the approval of the trustees to be given at their annual general meeting, may from time to time, at a meeting to be called for the purpose by special advertisement, and by special circular sent through the post to every member of the board stating the object of the meeting, resolve to construct any new road or bridge that they may think requisite, or to widen, straighten, or improve the levels of any existing road or bridge under their management, and may acquire by agreement any lands necessary for any such work, under the powers and subject to the conditions contained in the Lands Clauses Consolidation (Scotland) Act, 1845, and in the Lands Clauses Consolidation Acts Amendment Act, 1860, the provisions of which Acts, with reference to the acquisition of lands by agreement, are hereby incorporated with

this Act; or the board may in like manner enter into an agreement with any person or corporation (including the trustees of any adjoining county or the local authority of any burgh) for the execution of any such work, and may require such person or corporation to provide the whole or any part of the expense of such work as a condition of the execution of the same; and all new roads and bridges so constructed shall be highways; and the expense of any such work, so far as payable by the board, shall be raised by an assessment to be imposed and levied, as the trustees may determine, either on the county or on the district or districts within which such work is situated, in the same manner and with the same powers, including the power of borrowing money, as is hereinafter provided in the case of assessments for payment of debt in so far as the same are applicable thereto; and such assessment shall not extend over a longer period than *fifty years*, and shall be levied from and paid by the proprietors of lands and heritages within such county or district or districts.

Valuation and Allocation of Debt.

Clerks of trusts to make out lists of debts.

53. The clerk of every turnpike trust and statute labour trust in each county (including the burghs situated wholly or partly therein) shall, whether the roads and bridges subject to such trust are wholly situated within such county or not, within three months after the registration in the sheriff court books as aforesaid of the resolution of the road trustees of such county to adopt this Act, or of the commissioners of supply of such county to adopt the provisions of this Act relating to the consolidation of turnpike trusts, or to the consolidation of statute labour trusts (as the case may be), make out a list of the whole debts of such trust as at the date of such registration, distinguishing as far as possible their order of preference, and also showing what proportions thereof consist of principal, and of arrears of interest, and also the rate or rates of interest, if any, chargeable and paid upon such principal, and the names of the creditors in such debts, so far as known to them; and such list shall be deposited in the office of such clerk for the inspection of all persons interested or claiming to be interested in such debts.

Intimation to creditors.

54. The clerk of each such trust shall, by special advertisement, and also by notice inserted once in the Edinburgh Gazette, within eight days after the aforesaid list has been deposited, give intimation that such list has been deposited for inspection, and require all persons claiming to be entitled to payment of any debt affecting the

A.D. 1877.

roads and bridges embraced in such trust, or the tolls or revenues thereof, to lodge their claims and the vouchers thereof with such clerk on or before a day to be specified in such notice, which day shall be not less than *six weeks* and not more than *two months* after the last publication of such advertisement.

Revised list of debts to be made up.

55. Within *twenty-one days* after the day so specified in the said notice the clerk of each such trust shall, from the list originally made up by him, and the claims and vouchers which may be lodged with him, make up a full and complete revised list showing all the debts affecting or alleged to affect the roads and bridges embraced in such trust or the tolls or revenues thereof, and the arrears and rates of interest due thereon, and the names and designations of the creditors entitled or claiming to be entitled thereto, with such notes or observations on such claims and vouchers as he may think necessary.

Revised list to be open to inspection.

56. The list of debts revised as aforesaid shall, immediately on the expiration of the said period of *twenty-one days*, be docquetted and signed by the clerk of the trust, and thereafter deposited in the office of the county road clerk; and where under any trust there is a road or bridge situated in more than one county in which this Act, or the provisions of this Act relating to the consolidation of turnpike trusts, or to the consolidation of statute labour trusts (as the case may be) shall have been adopted, a copy of such list of debts, docquetted and signed as aforesaid, shall be deposited in the office of the county road clerk of each such county; and intimation that the same has been so deposited shall be made by special advertisement, and the said list shall for *one month* after the first publication of such intimation be open for inspection, free of charge, to all persons interested or claiming to be interested therein; and any person claiming to be a creditor of the trust may during that period require such clerk to insert his name in the said list.

Debts to be charged against counties and burghs, and may be compromised.

57. The debts of each trust, valued and allocated as hereinafter provided, and no others, shall be charges against the several counties respectively within which the roads and bridges are situated upon which or the tolls or revenues whereof respectively such debts were charges before the adoption of this Act, or of the provisions of this Act relating to consolidation of turnpike trusts or of statute labour trusts (as the case may be); provided that where the maintenance and management of the turnpike roads and statute labour roads and portions of such roads within any burgh shall have been or shall be vested under the provisions of this Act in the local authority of such burgh, such debts, or a share of such

debts, valued and allocated as herein-after provided, shall be a charge against such burgh; and it shall be lawful for the trustees of any county or counties, and for the local authority of any such burgh, within which the road or bridge subject to any such debt is situated or partly situated, to adjust, compromise, and determine in conjunction with the creditor or creditors, the value of any such debt due or claimed to be due by or from any such trust and burgh respectively: Provided that no such adjustment, compromise, or determination shall be effectual unless made or approved of at a general or special meeting of the trustees, or at an ordinary meeting of the burgh local authority, as the case may be. A.D. 1877.

58. In the event of the value of any debt not being adjusted, compromised, and determined as herein-before provided, it shall be lawful for the trustees or burgh local authority (as the case may be) to tender to the creditor therein a written statement of the value at which such debt is estimated by them; and such statement, if accepted by such creditor, or not objected to by him within the period of one calendar month from the date of such tender, shall be held to ascertain and determine the value thereof; and it shall be lawful for such creditor, if dissatisfied with such statement, within one calendar month from the date of such tender, and for any person claiming to be a creditor to whom no such tender shall be made, to require the trustees or burgh local authority (as the case may be) to name one person to act as arbiter, and such creditor or person claiming to be a creditor may also name one person to act as arbiter, and the arbiters so named shall forthwith appoint an oversman, or if they cannot agree in such appointment, or if either party fail to appoint an arbiter, an oversman shall be appointed by the Lord Ordinary on the Bills on the application of either party, and thereupon the arbiters shall forthwith proceed to ascertain whether any debt is due, and if due to estimate and determine the value thereof and of the arrears of interest, if any due thereon, and in making such valuation shall take into account every circumstance which may in their opinion reduce, enhance, or in any way affect the value thereof, and any one having interest shall be entitled to appear and be heard before the arbiters; and the oversman shall be present during all the proceedings before the arbiters, and shall determine any matter upon which they differ, or if either party fail to appoint an arbiter, or if either arbiter fail to proceed under the arbitration, the other arbiter and the oversman may proceed with and determine the same, and the decision of the arbiters, or when they Valuation of debts.

A.D. 1877.

differ of the oversman, or if either party fail to appoint an arbiter, or if either arbiter fail to proceed with the arbitration, the decision of the other arbiter and of the oversman, shall be final and not subject to review in any manner or upon any grounds whatever: Provided that where any creditor shall be found liable in the whole or any part of the expenses of the arbitration, as determined by the arbiters, or oversman, or arbiter and oversman (as the case may be), the same may be deducted from the sum or sums found due to him before payment thereof, or may be recovered in any other way.

Allocation of debts on roads in two or more counties.

59. Where any turnpike trust or statute labour trust comprises any road or bridge situated in two or more counties in Scotland, in any of which counties this Act or the provisions of this Act relating to the consolidation of turnpike trusts or of statute labour trusts (as the case may be) shall have been adopted, the county road trustees of the county or counties in which this Act or such provisions shall have been adopted, and the trustees of such road or bridge in other cases, respectively may adjust, compromise, and determine in what proportions the debts valued as aforesaid affecting such road or bridge, or the assets, if any (other than lands, buildings, and works), belonging thereto shall be allocated and made chargeable upon or be divided between or among such counties or county and trustees respectively, or, if they shall fail to do so, the accountant appointed in terms of this Act shall, on the application of the said county road trustees or other trustees, or of any of them, act as sole arbiter, and shall forthwith proceed to ascertain and determine the proportions in which, according to equity, and taking into consideration all the circumstances of the case, the debts and assets aforesaid ought to be and shall be allocated upon and be a charge against, or be divided between or among the several counties or county and trustees respectively, and the decision of the accountant shall be final: Provided that the expenses of such arbitration (including a reasonable fee to the accountant) shall be payable by the said county road trustees and other trustees rateably according to the amount of debt or of assets allocated to their respective counties or trusts.

Allocation of debts between landward parts of counties and burghs.

60. Where any turnpike trust or statute labour trust comprises any road or bridge situated within or partly within any burgh or burghs, the maintenance and management of the turnpike roads and statute labour roads in which have been vested in the local authority thereof in manner herein-before provided, and partly within any county or counties, in which county or in any of which

counties this Act or the provisions of this Act relating to the consolidation of turnpike trusts or of statute labour trusts (as the case may be) shall have been adopted, the county road trustees of the county or counties in which this Act or such provisions shall have been adopted, and the trustees of such road or bridge in other cases, and the local authority or authorities of such burgh or burghs respectively, may adjust, compromise, and determine in what proportions the debts valued as aforesaid affecting such road or bridge, or the assets, if any (other than lands, buildings, and works), belonging thereto, shall be allocated and made chargeable upon or be divided between or among such county or counties, trustees, and burgh or burghs, respectively, or, if they shall fail to do so, the accountant appointed in terms of this Act shall, on the application of the said county road trustees, or other trustees, or of the said local authorities, or of any of them, act as sole arbiter, and shall proceed forthwith to ascertain and determine the proportions in which, according to equity, and taking into consideration all the circumstances of the case, the debts and assets aforesaid ought to be and shall be allocated upon and be a charge against, or be divided between or among such county or counties, trustees, and burgh or burghs respectively, and the decision of the accountant shall be final: Provided that the expense of such arbitration (including a reasonable fee to the accountant) shall be payable by the said county road trustees, and other trustees, and local authority or authorities, rateably according to the amount of debt or of assets allocated to their respective county or counties, and trusts, and burgh or burghs respectively.

Allocation of debt where road partly situated in England.

61. Where any trust comprises a road or bridge situated partly in a county in England and partly in a county in Scotland, the county road trustees of such county in Scotland, failing agreement with the creditors in the debts affecting such trust, may apply in a summary way to the sheriff of such county to value and allocate such debts as the same should be made to affect the portion of the said road or bridge situated in Scotland; and after such intimation as he shall think necessary to the creditors in the said debts, and others interested, if any, the sheriff shall value such debts on the same principles as are herein-before set forth with reference to other road debts, and shall fix and determine what proportion of the debts so valued shall be made a charge against the said county in Scotland, and his decision shall be final: Provided that nothing herein contained shall prevent the trustees under such trust from continuing to levy tolls on the portion of the said road or bridge situated in England, or shall prejudice the right of the creditors in such debts

A.D. 1877.

as against the portion of such road or bridge so situated, except in so far as the said debts shall have been allocated against the county in Scotland in terms of this Act.

Certificate of debt to be granted to creditors.

62. The trustees and burgh local authorities shall respectively deliver to each creditor, in respect of any debt which has been valued as herein-before directed, a certificate or certificates in the form or as nearly as may be in the form of Schedule (A.), No. 1, hereunto annexed, signed by the chairman of such trustees or by the provost or chief magistrate of such burgh (as the case may be); and each certificate shall be entered in a register to be kept by the county road clerk or by the clerk of the burgh local authority (as the case may be), and shall be conclusive evidence of the right of such creditor to the said debt, and may be transferred by such creditor, or any other person having right thereto for the time being, by an indorsation in the form or as nearly as may be in the form of Schedule (A.) No. 2, hereto annexed, which transfer shall be entered in the said register; and the person in whose favour such transfer is made and registered shall acquire thereby the whole rights in regard to such debt of the creditor in whose favour such certificate was originally granted.

Certain road debts may be charged on entailed estates by bond and disposition in security.

63. Whereas by section sixty-eight of the General Turnpike Act it is enacted "that it shall and may be lawful for any proprietor or "heir of entail in possession of any entailed estate, or the tutor or "curator of such proprietor or heir of entail, who may be desirous "of advancing or lending any sum or sums of money for the "purpose of making or maintaining any turnpike road or building "any bridge on the same to be made or built subsequent to the "passing of this Act, either to bind himself personally as a trustee "of such turnpike road, and also to bind the succeeding heirs of "entail, for the repayment of any such sum or sums to any person "or persons who may advance the same to the trustees of such "turnpike road, or to advance such sum or sums, and to render "the same a burden upon the said entailed estate and the succeed-"ing heirs of entail, or having advanced such sum or sums to "borrow the like sum or sums, and to bind himself and the said "estate and the heirs of entail succeeding thereto for the same; "and all bonds and obligations for money so to be advanced or "borrowed and applied shall be held to bind such proprietors in "cases where they have personally bound themselves and also the "heirs of entail in such estates for the repayment of such money, "and such bonds and obligations shall be valid and effectual "against the granters of the same, and also against the heirs of

" entail succeeding to them in such entailed estates, and such sums " shall be and continue to be a real burden on such estates till " repaid out of the tolls and duties levied on such turnpike road: " Provided always, that the share or proportion of such sum or " sums of money to be so advanced or borrowed affecting such " succeeding heirs of entail shall not exceed one year's free rent " of the entailed lands of such proprietor situated in each parish " respectively through which any such turnpike road or any part " thereof shall run, or in which any such bridge or any part " thereof shall be built, and that the heir of entail in possession " of such entailed estate shall be obliged to keep down the interest " of such sum or sums of money so advanced or borrowed: Pro- " vided also, that it shall not be lawful to the creditor or creditors " in right of any such debt to adjudge or otherwise evict the " entailed estate for payment thereof or any part thereof, but it " shall and may be competent to such creditor or creditors to " prosecute such remedy or remedies against the rents thereof as " are given and allowed by the law of Scotland to heritable " creditors:" A.D. 1877.

And whereas under the above-recited provision of the General Turnpike Act various heirs of entail have advanced or incurred liabilities for sums for making and maintaining turnpike roads and building bridges thereon, and such advances have been made and such liabilities have been incurred in reliance upon the continuance of a right to levy tolls, which right may be abolished under the provisions of this Act; and whereas it may happen that under these provisions the full amount of such advances and liabilities may not be included in the amount for which certificates of debt are under the preceding section of this Act directed to be granted to the creditors therein: Be it enacted, that the heirs of entail who have made such advances or incurred such liabilities shall have all the like powers of charging the fee and rents of the entailed estates or any portions thereof, other than the mansion houses, offices, and policies thereof, with the full amount which they may have respectively advanced or for which they may have respectively become liable as aforesaid, so far as such amount is not included in such certificates, and of granting, with the authority of the Court of Session, bonds and dispositions in security for such amount, as by the Act passed in the thirty-first and thirty-second years of the reign of Her present Majesty, chapter eighty-four, section eleven, are conferred with reference to entailers debt; and such bonds and dispositions in security may be granted in favour of any parties in

A.D. 1877.

the right of such sums at the date when such bonds and dispositions in security are executed.

Provisions for Payment of Debt.

Payment of interest.

64. The trustees shall annually investigate and determine what sum of money is requisite to pay the interest of the debts chargeable under the provisions of this Act against the county for the then current year, and shall impose and cause to be levied an assessment on all lands and heritages within the county at such a rate as shall be necessary to provide the aforesaid sum; and in like manner the local authority of any burgh upon which any debts are chargeable under the provisions of this Act shall impose and levy annually such an assessment as may be necessary to pay the interest of such debts as are charges against the burgh.

Trustees and burgh local authority may resolve to pay off debt.

65. The trustees of any county may, at any general meeting after notice given by special advertisement three weeks previously thereto, resolve that the debts or any part thereof affecting the highways within such county, allocated and valued as herein-before provided, shall be paid and provided for, and the local authority of any burgh may, at any special meeting held for the purpose, after notice given by special advertisement three weeks previously thereto, resolve that the debts or any part thereof affecting the roads and streets within such burgh, allocated and valued as herein-before provided, shall be paid and provided for.

Assessment for payment of debt.

66. After such resolution has been adopted by the trustees of any county, such trustees shall impose and levy annually an assessment on the whole lands and heritages appearing on the valuation roll of such county; and after such resolution has been adopted by the local authority of any burgh, the said local authority shall impose and levy annually an assessment upon the whole lands and heritages appearing on the valuation roll of such burgh; and such assessment shall be imposed and levied in the county and burgh respectively at such rates as shall be sufficient to provide a sum equal to not less than *one fiftieth* part of the principal debt valued and allocated on such county and burgh respectively, and also the yearly interest on such debt, or the balance thereof from time to time remaining due, at a rate *not exceeding five pounds per centum per annum.*

All assessments for payment of debt, and for payment of interest on any debt, shall be paid by proprietors only.

Trustees and burgh local authority

67. It shall be lawful for the trustees of any county, and the local authority of any burgh respectively, to borrow on the security

of the assessments for the payment of debts to be levied under this Act within their respective bounds, or on the security of any part thereof, all or any moneys required in such county or burgh for the purpose of paying off the whole or any of the debts as valued, or any part thereof, and such moneys may be borrowed at any rate of interest *not exceeding five pounds per centum per annum;* and such moneys may be borrowed under an assignation in security in the form contained in the Schedule (B.) No. 1 to this Act annexed, or to the like effect, which shall be duly executed if signed in the case of money borrowed by the trustees in the manner and by the person or persons herein-after appointed for the purpose, and in the case of money borrowed by the local authority of any burgh by the provost or chief magistrate and clerk of the local authority of such burgh; and every such assignation in security shall be effectual for securing to the person advancing the sum of money in such deed expressed to be advanced, and to his executors, administrators, and assignees, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as is in such assignation in security provided; and the said assignations in security shall be numbered in the order of succession in which they are granted, and shall be entered by the county road clerk or clerk of the burgh local authority (as the case may be) in a book, to be called the register of road and bridge debt securities, to be kept by such clerk for that purpose; and every such assignation in security shall be validly transferred by an indorsation thereon, executed by the person entitled thereto for the time being, of a transfer in the form or as nearly as may be in the form of the Schedule (B.) No. 2, hereunto annexed; and the persons in right of such assignations in security shall be creditors upon the assessments thereby expressed to be assigned in security in an equal degree one with another, and shall not have any preference or priority other than is provided in such assignations in security under the powers of this Act.

may borrow on security of assessments.

68. The trustees of any county and the local authority of any burgh by whom any such assignations in security as aforesaid shall have been granted, shall annually make payment to the creditors therein, out of the assessments coming into their hands for that purpose, of interest at a rate *not exceeding five pounds per centum per annum* on the sums contained in any such assignations in security, and also of such farther sums to account of the principal sums contained in such assignations in security as will extinguish the same within the currency of the assessments for extinction of debt to be levied under the powers of this Act; and the said

Loans to be repaid out of assessments imposed under authority of Act.

A.D. 1877.

trustees and local authority shall, by agreement with the persons advancing any money as aforesaid, determine the order of priority in which the several sums advanced shall be respectively discharged; and the trustees of each county and the local authority of each burgh so borrowing any moneys are hereby required to keep an exact and regular account of all receipts and payments in respect of principal moneys borrowed as aforesaid, and the interest thereof, in a book or books separate and apart from all other accounts.

Provision for protection of lenders on security of assessments.

69. No person lending any moneys as aforesaid, and taking an assignation in security for repayment thereof, executed in manner directed or allowed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act have been duly complied with; and it shall not be competent to any person to question the validity of any such assignation in security on the ground that such provisions have not been complied with.

Trustees and burgh local authority may pay off loans, and borrow money for that purpose.

70. It shall be in the power of the trustees of any county, or the local authority of any burgh, to require from any creditor in a debt valued under the provisions of this Act, at any term of Whitsunday or Martinmas, on three months previous notice, an assignation or discharge of his debt valued and allocated as aforesaid, on payment to such creditor of the whole amount at which such debt has been valued, or of such balance thereof as may remain due; and in every case where any moneys shall have been borrowed under the powers of this Act it shall be lawful for the trustees or local authority by whom such moneys shall have been borrowed from time to time to pay off the moneys so borrowed, and again to borrow the same, but so nevertheless that all moneys borrowed shall be repaid within a period not exceeding *fifty years* from the time when the assessment for the extinction of debt was first imposed by them under the provisions of this Act.

Unclaimed instalments to be consigned.

71. In case any debt or interest due thereon shall remain in the hands of the trustees of any county, or the local authority of any burgh, unclaimed by the persons entitled thereto for the period of *three months* after the term of Whitsunday or Martinmas at which the same respectively became payable, the trustees and local authority shall respectively be exonered and discharged in so far as respects such debt or interest by consignation thereof in the name of the persons entitled thereto, so far as known to them, in any chartered or incorporated bank in Scotland.

Sums payable to persons under

72. Any sums payable under this Act to persons under disability may be consigned in bank in manner provided by the Lands

Clauses Consolidation (Scotland) Act, 1845, in the case of moneys payable to persons under disability. A.D. 1877.

disability may be consigned.

General Provisions as to Assessments.

73. All assessments imposed under the authority of this Act shall be deemed to be for the year from *the fifteenth day of May* preceding the date of imposing the same, and shall be imposed according to the valuation of the lands and heritages in the valuation roll in force for the year in which such assessment is imposed, and shall be made payable on or before a day to be fixed at the time of imposing the same, not earlier than the *first day of November* and not later than the *first day of January* then next ensuing. Terms at which assessments shall be payable.

74. All assessments imposed by the trustees under the provisions of this Act may be levied and collected by the county road collector, or such other person or persons as the trustees may from time to time appoint: Provided that it shall be lawful for the trustees, if they shall see fit, to require the commissioners of supply of the county to collect the assessments imposed by the trustees under the provisions of this Act, and the commissioners of supply of the county shall cause all such assessments to be levied and collected, when required to do so by the trustees, who shall be liable for and pay the whole necessary expenses attending such collection. Collection of assessments.

75. All appeals by persons complaining that they have been improperly assessed in respect of any assessment imposed by the trustees under the provisions of this Act shall be heard and determined by the board; and the trustees when imposing any assessment shall fix a day, not being less than *fourteen days* after delivery of the notice of such assessment, nor less than *one month* previous to the day on which such assessment is made payable, on or before which appeals by any persons complaining that they have been improperly assessed shall be lodged with the county road clerk, and another day, not less than *fourteen days* thereafter, on which such appeals shall be heard; provided that notice of both such days shall be given upon or along with the notice of assessment: Provided also, that it shall be lawful for the board to relieve from assessment any occupiers of lands and heritages under the annual value of *four pounds*, as appearing on the valuation roll, on the ground of poverty. Board to hear appeals.

76. The whole powers and rights of issuing summary warrants and proceedings in relation to, and all remedies and provisions enacted for recovery of, the land and assessed taxes, or either of Power to recover assessments imposed by trustees.

A.D. 1877.

them, and other public taxes, shall be applicable to the assessments by this Act authorised to be imposed and levied; and sheriffs, magistrates, justices of the peace, and other judges may, on the application of the clerk or collector, grant warrant for the recovery of such assessments, in the like form and under the like penalties as is provided in regard to such land and assessed taxes and other public taxes: Provided, nevertheless, that it shall be competent to the trustees to prosecute for and recover such assessments by action in the sheriff small debt court, or in any other court (as the case may be), and that in any summons, complaint, or action for the recovery of such assessments more than six defenders may be cited and called, any law or practice to the contrary notwithstanding; and all assessments imposed in virtue of this Act shall, in the case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferred to all other debts of a private nature due by the parties assessed.

Appeals against and recovery of assessments in burgh.

77. The provisions for appeals against and recovery of police assessments in any burgh shall apply to appeals against and the recovery of assessments imposed under this Act by the local authority of such burgh.

Burgh may apply certain funds to maintenance of roads in lieu of assessments.

78. When in any burgh there shall be under the control of the local authority thereof any funds available, and which may be lawfully applied, for the maintenance and repair of roads and streets therein, or for the payment of debt affecting any such roads and streets, such local authority may apply such funds for such purposes in aid of the assessment authorised to be imposed by this Act; or otherwise, if such funds shall be sufficient for such purposes, the whole or such part thereof as may be necessary may be so applied, in place of making an assessment under the provisions of this Act.

Miscellaneous.

Authentication of documents relating to execution of Act.

79. For the purposes of this Act, the signature of the chairman of the trustees, or of the chairman of the board, or of the chairman of any district or other committee, or of any sub-committee to be appointed in terms of this Act, or of the chairman of any meeting of the trustees, or of the board, or of any such committee or sub-committee, adhibited to any writing or document, shall be equivalent to the signatures of the whole trustees or members of the board, or of the whole members of such district or other committee or sub-committee, present at a meeting thereof respectively; and the addition to such signature of the word "chairman" shall be

good primâ facie evidence that such signature is the signature of such chairman, and that such writing or document is genuine and authentic.

Minutes of trustees, &c. to be receivable in evidence.

80. Any minute made of the proceedings at any meeting of the trustees, or of the board, or of any district or other committee or sub-committee, if signed either at the meeting at which such proceedings took place, or at the next ensuing meeting of the trustees, or of the board, or district or other committee or sub-committee (as the case may be), by any person purporting to be the chairman of such meeting, shall be receivable in evidence of such proceedings in all legal proceedings without further proof; and until the contrary is proved, every such meeting where minutes have been so made of the proceedings shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified.

Actions may be sued and defended in name of clerk.

81. The trustees or the board may sue and be sued in the name of their clerk for the time being; and no action or process shall fall or be suspended by the death, resignation, or removal of any such clerk: Provided that all expenses incurred by any such clerk in connexion with any action or proceedings instituted or defended under the orders or instructions of the trustees or of the board shall be paid out of any moneys or funds at the disposal of the trustees or of the board in whose interest or by whose directions such action or proceedings shall have been instituted or defended.

Actions now pending transferred to trustees under Act.

82. No action, prosecution, or other proceeding by or against any trustees or other persons acting under the authority of any general or local Act, in relation to any roads or bridges which shall become vested in the county road trustees or burgh local authority (as the case may be) under any of the provisions of this Act, shall cease or be discontinued or be prejudicially affected by this Act, but the same shall continue and take effect both in favour of and against the said county road trustees or burgh local authority (as the case may be) under this Act, in the same manner in all respects as the same would have continued and taken effect in relation to such trustees or other persons under such general or local Act if this Act had not been passed: Provided that if any question shall arise as to whether any action, prosecution, or other proceeding should be carried on at the instance of or against the county road trustees or the burgh local authority, the same may be disposed of incidentally, and without any action of transference or other separate proceeding by the court or judge before whom such action, prosecution, or proceeding depends.

A.D. 1877.

Former trustees to account for moneys and deliver up books.

83. All persons acting or who have acted under any general or local Act as trustees of any of the turnpike roads, statute labour roads, or bridges within the county, or as clerks or officers of such trustees, who shall at the date of adoption of this Act, or of the provisions of this Act with respect to the consolidation of turnpike trusts or of statute labour trusts respectively, have in their custody, power, or possession any moneys collected by virtue of such general or local Act, or any books, deeds, papers, writings, property, or effects belonging to the said turnpike or statute labour trusts respectively, or relating to the execution of any such Act, shall pay and deliver up the same to the county road trustees, or to such person as they shall appoint to receive the same, who shall hold and be liable to pay over or make forthcoming the same, subject to the provisions of this Act.

Books of former trustees to be evidence.

84. All books containing the accounts and proceedings of the trustees or other persons who have acted under any such general or local Act may be given in evidence in all claims, prosecutions, appeals, actions, and proceedings whatsoever under this Act, in the same manner as they might have been used under such general or local Act.

Trustees not to incur personal liability.

85. A trustee or member of the board, or of a district or other committee or sub-committee, by being party to or executing in his capacity as aforesaid any contract or other instrument, or otherwise executing any of the powers under this Act, shall not be subject individually to any action, prosecution, or other legal proceeding; and the trustees and the board may apply any moneys from time to time coming into their hands for the purpose of paying any expenses of legal proceedings, or any damages which they may incur in the bonâ fide execution of the powers by this Act granted to them.

Trustees not to hold any office of profit or participate in profits of any contract.

86. If any trustee—

(1.) Holds any office or place of profit under this Act; or

(2.) Participates in the profits of any work done under this Act; or

(3.) Is concerned in or participates in the profit of any contract entered into under this Act:

Such person shall cease to be a trustee, and his office shall thereupon become vacant, subject to the exceptions following; (that is to say,)

(*a.*) A trustee shall not vacate his office by reason of his being a shareholder in any joint stock or incorporated company entering into any contract with

or supplying any article by order of the trustees or of the board, or of any district or other committee or sub-committee; and

(*b.*) A trustee shall not vacate his office by reason of his being interested in any sale, feu, or lease of any lands, or any loan of money to the trustees;

Nevertheless a trustee or member of the board, or of a district or other committee or sub-committee, shall not be entitled to vote in respect of any contract with or any supply of articles by order of the trustees or of the board, or of such district or other committee or sub-committee, where such contract is entered into with or such articles are supplied by any company in which he is a shareholder, or in respect of any question connected therewith, or in respect of any such sale, feu, lease, or loan as is herein-before mentioned; and if he does so vote his vote shall not be counted, and he shall incur for each time when he so votes a penalty *not exceeding twenty pounds.*

No person holding office to participate in profits of any contract.

87. No person holding any office under this Act shall directly or indirectly participate in the profits of any work done by order of, or be concerned in or participate in the profit of any contract entered into with, or any supply of articles made to the trustees, or to the board, or to any district or other committee or sub-committee, under the penalty of *one hundred pounds;* and it shall be in the option of and competent to the trustees or the board, or the district or other committee or sub-committee, to render any contract null and void in the profit of which any such person has participated or may participate.

Trustee may act as sheriff or justice.

88. No trustee shall be disqualified from acting as a sheriff or justice of the peace in the execution of this Act by reason of his being such trustee.

Moneys to be lodged in bank.

89. All moneys received by or on behalf of the trustees or of the board under the authority of this Act shall, as soon as may be thereafter, be paid by the person receiving the same into an account to be kept in name of the trustees or of the board with some incorporated or joint stock bank, or branch thereof, to be for that purpose appointed by the board.

Cheques on bank account of trustees or board.

90. All cheques on the bank accounts kept by the trustees or the board shall be signed by a member of the board and by the treasurer; and no cheques shall be drawn on such accounts for any other purpose than the payments which shall from time to time be authorised by the trustees or the board.

A.D. 1877.

Cheques on bank account of district committee.

91. All sums passed by the trustees or the board to the account of any district committee, for the management, maintenance, and repair of the highways within such district, shall be respectively paid into an account to be kept in name of the district committee with an incorporated or joint stock bank, or branch thereof, to be appointed by the board, and all cheques on such account shall be signed by a member and the treasurer of the district committee.

Execution of bonds and other securities.

92. All bonds, mortgages, debentures, or other securities for money borrowed by the trustees, and all dispositions and conveyances of property belonging to the trustees, shall be signed by *two* of the trustees and by the clerk, except where otherwise expressly provided; and the clerk shall keep a register of all bonds, mortgages, debentures, or other securities granted by the trustees under this Act, and of the transfers thereof.

Mortgages to be personal estate.

93. All bonds, mortgages, debentures, or other securities for money granted under the authority of this Act, and all money advanced and lent on the security of any assessment leviable under this Act, shall be movable or personal estate, and transmissible as such.

Application of moneys not otherwise appropriated.

94. All moneys received by the trustees on account of assessments or penalties, or otherwise, for the application of which no special provision is made in this Act, shall be applied as follows:

(1.) In payment of the salaries and allowances of officers and servants, and the general expenses of management of the trust:

(2.) In payment of the expense of maintaining, repairing, and improving the several highways:

(3.) In payment of the interest on the debts affecting the highways, valued and allocated as herein-before provided, and towards payment of the principal of such debts.

Audit of accounts.

95. The accounts of the trustees shall be balanced annually on *the fifteenth day of May*, and shall be audited by an auditor appointed by the sheriff by any writing under his hand. The accounts as audited shall be laid before the next annual general meeting of the trustees.

Repeal of Acts.

96. From and after the adoption in any county of this Act, or of the provisions of this Act relating to the consolidation of statute labour trusts, the General Statute Labour Act shall cease to have effect in such county; and from and after the adoption in any county of this Act, or of the provisions of this Act relating to the

consolidation of turnpike trusts, the General Turnpike Act, except the sections thereof incorporated herewith as after mentioned, shall cease to have effect in such county: Provided that nothing herein contained shall affect anything duly done or suffered, or any right acquired or accrued, or any liability, penalty, forfeiture, or punishment incurred, under the General Statute Labour Act, or the General Turnpike Act, or any other Act which, by reason of the adoption of this Act or of any of the provisions of this Act in any county, shall cease to have effect therein. A.D. 1877.

Incorporation of parts of General Turnpike Act.

97. The following sections of the General Turnpike Act, viz., sections eighty, eighty-one, eighty-three, eighty-four, and eighty-five, sections eighty-seven to ninety-two both inclusive, section ninety-four, and sections ninety-six to one hundred and eight both inclusive, in so far as the same are not inconsistent herewith, shall be and are hereby incorporated with this Act, and shall extend and apply to all the turnpike roads and statute labour roads already made in any county, from and after the time when the same respectively become highways by the adoption with respect thereto of this Act or of any of the provisions of this Act, and also to all roads which may be made in such county by the county road trustees; and in the construction of the General Turnpike Act, with reference to this Act, the expression "trustees under any Turnpike Act," or words having the like import, and the expression "turnpike roads" shall mean and apply to the trustees under this Act, and the roads and bridges placed under their management under the provisions of this Act, as the case may require, in so far as such application shall not be excluded by the context or any of the provisions of this Act: Provided that it shall not be lawful for the trustees, or any person authorised by them, under the powers conferred by the eightieth section of the General Turnpike Act, to carry away any materials to be used by them, for any purpose whatsoever, to a greater distance than two miles from the place where such materials have been obtained.

Recovery and application of penalties.

98. All penalties under this Act may be recovered, together with the expenses of process, at the instance of the procurator fiscal, or of the clerk of the trustees, or of the clerk of the burgh local authority (as the case may be), before the sheriff or any two justices of the peace of the county in which the same shall have been incurred, under the provisions of the Summary Procedure Act, 1864; and all the jurisdictions, powers, and authorities necessary for this purpose are hereby conferred on sheriffs and justices of the peace.

A.D. 1877.

Every penalty imposed and recovered under this Act shall be paid to the clerk of court, and by him shall be accounted for and paid to the treasurer of the trustees or of the burgh local authority, as the sheriff or justices of the peace shall direct.

Every penalty imposed by this Act may be reduced or mitigated according to the judgment of the sheriff or justices of the peace.

Every person found liable in any penalty recoverable summarily under this Act shall, failing immediate payment thereof and expenses, be liable *to be imprisoned for a term not exceeding sixty days;* and the conviction and warrant may be in the form No. 3 of Schedule K. of the Summary Procedure Act, 1864.

Court of Session to enforce compliance with provisions of Act.

99. In case the trustees of any county, or persons appointed or directed by them, or the local authority of any burgh, or persons appointed or directed by them, or any other person, shall refuse or neglect to do what is by this Act required of them respectively, or in case any obstruction shall arise in the execution of any of the provisions of this Act, it shall be lawful for any person whose interest may be in any way affected thereby to apply by summary petition to the Court of Session in either of the divisions thereof, or during the vacation of the said court to the Lord Ordinary on the Bills, which court and Lord Ordinary are hereby authorised and required to do therein as to such court or Lord Ordinary shall seem just and necessary for the execution of the purposes of this Act.

SCHEDULES.

SCHEDULE (A.) No. 1.

I [*A.B., chairman of the county road trustees of the county of , or provost or chief magistrate of the burgh of* , as the case may be], in terms of "The Roads and Bridges (Scotland) Act, 1877," certify that [*name and designation of creditor*] is a creditor in turnpike road debt [*or* statute labour debt, *as the case may be*] in respect of moneys lent to or for behoof of [*specify the particular trust in the case of turnpike debt, and the district or parish in the case of statute labour debt*] valued at the sum of , and which has been allocated on the county of [*or* burgh of *as the case may be*], all in terms of the provisions of the said Act.

Witness my hand this day of 18 .

(Signed) *A.B.*

SCHEDULE (A.) No. 2.

I [*name and designation of cedent*] transfer to [*name and designation of assignee*], his executors, administrators, and assignees, my whole right and interest under this certificate.

[*To be signed and dated by the cedent.*]

SCHEDULE (B.) No. 1.

No. .

By virtue of "The Roads and Bridges (Scotland) Act, 1877," we, two of the county road trustees of the county of , and the clerk of the said trustees, acting under the said Act, as representing the said trustees [*or* the provost, *or* chief magistrate, *as the case may be*, and clerk of the local authority of the burgh of , acting under the said Act, as representing the said local authority] grant us to have borrowed and received from [*name and designation of lender*] the sum of pounds for the payment of valued road debt allocated on the said county [*or* burgh, *as the case may be*] under the provisions of the said Act. In consideration whereof we assign to the said [*name of lender*], his executors, administrators, and assignees, all the assessments to be raised and paid within the said county [*or* burgh, *as the case may be*] for the payment and extinction of debt under the provisions of the said Act, in security of the repayment of the said sum of pounds, and of the interest thereof after the rate of pounds per centum per annum from the day of until payment, which sum is to be repayable, with the interest at the rate aforesaid, as follows: [*state the terms of repayment according to the arrangement*]. And we consent to registration. In witness whereof [*insert testing clause in common form*].

SCHEDULE (B.) No. 2.

I [*name and designation*], in consideration of the sum of pounds, transfer to [*name and designation*], and his executors, administrators, and assignees, an assignation in security numbered [*insert the number of the assignation*], and dated [*insert date*], granted by the trustees of the county of [*or* by the local authority of the burgh of , *as the case may be*], acting under "The Roads and Bridges (Scotland) Act, 1877," for [*insert the stipulated annual payment and duration thereof*], from the day of . And I consent to registration. In witness whereof [*insert testing clause in common form*].

Roads and Bridges (Sc land). (No. 2.)

A

B I L L

To amend the Law in regard to the m ment and maintenance of roads and in Scotland.

(*Prepared and brought in by Sir Edward Colebrooke, Sir Windham Anstr and Colonel Murc.*)

Ordered, by The House of Commons, *to be Pri* 12 *February* 1877.

[Bill 72.]

Under 7 *oz.*

A

B I L L

TO

Fix the Salaries of the Members of the Royal Irish Constabulary, and to amend the eleventh section of the Constabulary (Ireland) Amendment Act, 1870. A.D. 1877.

WHEREAS by section two of the Constabulary (Ireland) Act, 1874, provision was made for the grant of revised salaries to the members of the Constabulary Force in Ireland; and the continuance of the payment of the said revised salaries is now by law limited to the first day of July one thousand eight hundred and seventy-seven, and it is expedient that such limitation should be repealed, and provision should be made for continuing the payment of such revised salaries; and also for amending the eleventh section of the Constabulary (Ireland) Amendment Act, 1870:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Continuation of revised salaries.

1. *From and after the passing of this Act*, so much of the Act passed in the session of Parliament held in the thirty-eight and thirty-ninth years of the reign of Her present Majesty, chapter forty-four, as limits to the first day of July one thousand eight hundred and seventy-seven the time during which the revised salaries therein mentioned shall continue to be paid shall be and the same is hereby repealed; and the said salaries shall continue to be paid *from and after the first day of July one thousand eight hundred and seventy-seven* from time to time as and when they shall become due respectively.

Amendment of Constabulary (Ireland) Amendment Act, 1870, sec. 11.

2. It shall be lawful for the Lord Lieutenant, by and with the advice of Her Majesty's Privy Council in Ireland, to alter or vary from time to time the numbers of sub-inspectors and head constables fixed by the eleventh section of the Constabulary (Ireland) Amendment Act, 1870, to such numbers as the Lord Lieutenant,

A.D. 1877.

by and with such advice as aforesaid, may from time to time consider to be required, not exceeding the numbers fixed by the said section for each of the said ranks respectively.

Short title.

3. This Act may be cited for all purposes as "The Constabulary (Ireland) Amendment Act, 1877."

lary.

A

BILL

To fix the Salaries of the Members of the Royal Irish Constabulary, and to amend the eleventh section of the Constabulary (Ireland) Amendment Act, 1870.

(*Prepared and brought in by Sir Michael Hicks Beach and Mr. Attorney General for Ireland.*)

Ordered, by The House of Commons, *to be Printed,* 19 *June* 1877.

[Bill 203.]

Under 1 *oz.*

A

B I L L

TO

Provide for transferring to the States of the Island of Jersey St. Catherine's Harbour Jersey, and certain land near it. A.D. 1877.

WHEREAS by an Order in Council of the sixteenth day of February one thousand eight hundred and sixty-six, made in pursuance of the Harbours Transfer Act, 1865, St. Catherine's Harbour Jersey, was (among other harbours) transferred from the Commissioners of the Admiralty to the Board of Trade, together with the breakwaters piers jetties quays wharves lighthouses roads approaches works buildings and things belonging thereto, and the ground and soil thereof, and the lands and hereditaments acquired for the purposes thereof, and all powers and duties in relation thereto, so far as, at the time of such transfer, the harbour, property, powers, and duties aforesaid were vested in or imposed on the Commissioners of the Admiralty, but subject to the conditions and restrictions mentioned in the order: 28 & 29 Vict. c. 100.

And whereas the States of the Island of Jersey have agreed to accept a transfer of the said harbour and the pier there, and its approaches and dependencies, upon condition that certain land in the vicinity thereof, and particularly mentioned in a report of a Committee of the States, referred to in a resolution of the States of the seventh day of February one thousand eight hundred and seventy-seven, should be ceded to the States in perpetuity on behalf of the public of the island, and have agreed to undertake, at the cost of the island, the expenses of the maintenance and repair of the said pier and dependencies, it being stipulated that the States are to have, as regards the works to be executed and the expediency of maintaining of completing or even should the public interest seem to them to require it of demolishing the said pier in whole or in part, and as regards the disposition of the property ceded, the same discretionary power that they now have with respect to the other harbours and piers of the island, and to the

A.D. 1877.

properties belonging to the public, except always that the States engage to maintain and keep in repair the lighthouse which is now on the pier as long as the pier shall remain, and the wants of navigation may require it :

And whereas the said land was purchased out of moneys provided by Parliament and is of the annual value of one hundred and seven pounds or thereabouts :

And whereas it is expedient to authorise in manner in this Act mentioned the transfer of the said harbour and land to the States of Jersey :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Power to Her Majesty by Order in Council to transfer St. Catherine's Harbour, Jersey, to the States of Jersey.

1. It shall be lawful for Her Majesty by Order in Council, to transfer to the States of Jersey, as from the time fixed by the order, St. Catherine's Harbour Jersey, and the breakwaters piers jetties quays wharves lighthouses roads approaches works buildings and things belonging thereto, and the ground and soil thereof, and the lands and hereditaments required for the purposes thereof, and all powers and duties in relation thereto, so far as, at the time of the transfer taking effect, the harbour, property, powers, and duties aforesaid are vested in or imposed on the Board of Trade, subject, nevertheless, to such conditions and restrictions (if any) as to Her Majesty in Council seem fit, and to such modifications of the said duties as appear to Her Majesty in Council to be necessary or proper for carrying into effect the recited agreement of the States of Jersey.

Power to Treasury to transfer land.

2. The Commissioners of Her Majesty's Treasury may, in accordance with the recited agreement of the States of Jersey, transfer to those States the land in the vicinity of St. Catherine's harbour Jersey, purchased out of moneys provided by Parliament, and particularly described in a report of a Committee of the States of Jersey, referred to in a resolution of those States of the seventh day of February one thousand eight hundred and seventy-seven.

States of Jersey to hold harbour and property for public service.

3. The harbour and land transferred under this Act to the States of Jersey shall be held by them in trust for the public service of the Island of Jersey.

Publication, &c. of Orders in Council.

4. Every Order in Council under this Act shall be published in the London Gazette, and shall be judicially noticed without being specially pleaded.

Every Order in Council under this Act shall be laid as soon as practicable before both Houses of Parliament, if Parliament is then in session, and if not, then as soon as practicable after the beginning of the then next session of Parliament.

Confirmation of acts of Board of Trade.

5. All matters and things done by the Board of Trade in relation to St. Catherine's Harbour Jersey before the making of an Order in Council under this Act, shall be and are hereby declared to be valid and effectual and binding upon all persons.

Short title.

6. This Act may be cited as The St. Catherine's Harbour Transfer Act, 1877.

St. Catherine's Harbour, Jersey.

A

B I L L

To provide for the transfer to the States of Jersey of St. Catherine's Harbour and certain lands near it.

(*Prepared and brought in by Mr. William Henry Smith and Mr. Secretary Cross.*)

Ordered, by The House of Commons, *to be Printed*, 16 *July* 1877.

[Bill 251.]

Under 1 *oz.*

Saint Stephen's Green (Dublin) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title.
2. Discharge of debt.
3. Payment into court by Commissioners.
4. Saint Stephen's Green to be rendered suitable for a public park.
5. Order of Lord Lieutenant for opening Saint Stephen's Green.
6. Transfer of Saint Stephen's Green to the Commissioners of Public Works.
7. Transfer of property of existing Commissioners to Commissioners of Public Works.
8. Existing Commissioners to cease to act, and repeal of 54 Geo. 3. c. 208.
9. Continuance of powers of existing Commissioners until transfer.
10. Contracts prior to transfer to be binding.
11. Actions, &c. not to abate.
12. Release of future rent.
13. Obligation of Corporation to provide gas and water.

Management of Saint Stephen's Green.

14. Commissioners of Public Works to maintain Saint Stephen's Green as a park or pleasure ground, and may erect lodges, lay out ground, &c.

Bylaws.

15. Commissioners of Public Works may make byelaws.
16. Bylaws to be set up in Saint Stephen's Green.
17. Evidence of byelaws.
18. Penalty for defacing boards.
19. Recovery and application of penalties.
20. Part of expenses of Commissioners to be paid out of moneys voted by Parliament.
21. Saint Stephen's Green exempt from taxes.

[Bill 167.] A

A

B I L L

TO

Vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park; and for other purposes. A.D. 1877.

WHEREAS by an Act passed in the session of Parliament held in the fifty-fourth year of the reign of King George the Third, chapter two hundred and eight, intituled "An Act for "the Improvement of the square called Saint Stephen's Green in "the city of Dublin," (in this Act referred to as "the Act of 1814,") the Lord Mayor, Recorder, Treasurer, and High Sheriff of the said city, and the representatives in Parliament for the said city, all for the time being, together with certain then inhabitants of the said square, and their successors to be elected in manner therein-after mentioned, were constituted and appointed Commissioners for carrying that Act into execution; and such Commissioners were empowered to contract for the absolute purchase of all or such part of the ground in the interior of the square called Saint Stephen's Green as they should judge necessary for the purposes of that Act, or for a grant thereof in fee farm, subject to such annual rent as might be agreed upon, and the moneys to be paid either for the absolute purchase thereof or for the annual rent to be received under such grant were to be paid out of the moneys to be raised by virtue of that Act, and the said Commissioners were empowered to contract for the making, finishing, and completing, improving, ornamenting, and enclosing of the said square; and towards making, completing, and finishing the said inclosure and improvements, and in order to create a permanent fund for that purpose, and for the payment of the purchase money of the ground in the interior of the said square, or for the annual rent thereof, all the houses, ground, lots, and tenements surrounding the said square were made liable to the annual payment of such sum as the said Commissioners should from time to time in manner therein mentioned direct, not exceeding the rate of five shillings for each foot of frontage; and in order to raise a sufficient sum of money for the purposes of the said Act, the said Commissioners were empowered to raise by sale or mortgage of all or any part of the said fund, or by issuing debentures thereon, bearing interest at a rate not exceeding six pounds per centum per annum,

A.D. 1877.

or by the yearly appropriation of any part thereof, such sum or sums of money as should or might be sufficient for the purpose of paying the purchase money or rent of the ground of the interior of the said square (as the case might be) as aforesaid, and for all other the purposes therein mentioned:

And whereas in pursuance of the provisions of the Act of 1814 the Commissioners constituted by the said Act agreed with the Right Honourable the Lord Mayor, Aldermen, and Burgesses of the said city of Dublin (in this Act referred to as "the Corporation") for a grant in fee farm of the said square at a yearly rent, and in pursuance of such agreement a conveyance by way of lease and release bearing date the nineteenth day of November one thousand eight hundred and fourteen was made to the said Commissioners by the Corporation of the land or ground in the interior of the said square, and which are the premises herein-after more particularly described, at the yearly rent of three hundred pounds late Irish currency, equal to two hundred and seventy-six pounds eighteen shillings and sixpence present currency of the United Kingdom:

And whereas since the passing of the Act of 1814, the Commissioners thereby constituted and their successors have continued to act in execution of the said Act:

And whereas the residue now remaining unpaid of the debt created under the Act of 1814 by the issue of debentures amounts to two thousand pounds or thereabouts, together with the interest thereon now due at the rate of four pounds per centum per annum:

And whereas there is within the municipal boundaries of the city of Dublin no public park, and it would be of great public advantage, and conduce to the health and enjoyment of the inhabitants of the said city, if the said square were opened for their recreation and enjoyment; and were for that purpose discharged from all estates, claims, rights, and incumbrances affecting it, and were vested in and maintained and managed by the Commissioners of Public Works in Ireland:

And whereas in furtherance of the object aforesaid it has been agreed between the Corporation and the Commissioners of Saint Stephen's Green (in this Act referred to as the "existing Commissioners"), and Sir Arthur Guinness, Baronet, one of the members elected to serve in the present Parliament for the said city of Dublin, that the said Sir Arthur Guinness should provide such funds as may be necessary for paying the residue now remaining unpaid of the said debenture debt, and all interest which shall accrue due thereon after the passing of this Act and until the discharge of the said debt, and should effect such improvements in the said square as shall, in the opinion of the Commissioners of Public Works in Ireland,

render it suitable for a public park ; and that the Corporation should immediately after the gale day next ensuing after the passing of this Act relinquish the aforesaid yearly rent, and release the said existing Commissioners and the said square from all claims on foot thereof, and, so soon as the said square shall be opened for the purposes aforesaid, should thenceforth gratuitously supply water and gas at such time and in such quantities as may in the opinion of the said Commissioners of Public Works be required for the use of the said square as a public park; and that all the estate and interest of the existing Commissioners under the said conveyance of the nineteenth day of November one thousand eight hundred and fourteen, and all their liabilities thereunder should, so soon as the said square shall be opened for the purposes aforesaid, immediately be determined in the manner herein-after provided ; and that the said square should be vested in the Commissioners of Public Works in Ireland, (herein-after called "the Commissioners of Public Works,") discharged from all claims of the said existing Commissioners, and of the Corporation, and from all other estates, rights, and incumbrances affecting the same :

And whereas the Lords Commissioners of Her Majesty's Treasury have sanctioned the said arrangement :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited for all purposes as "The Saint Stephen's Green (Dublin) Act, 1877."

Discharge of debt.

2. *Immediately after the passing of this Act* an account shall be taken by the existing Commissioners of the sums which shall be then due for principal and interest on foot of debentures issued for moneys borrowed in pursuance of the provisions of the Act of 1814. Upon the taking of such account the said Sir Arthur Guinness shall pay to the existing Commissioners the sum which shall be ascertained to be due for principal, and for such interest as shall accrue due after the passing of this Act and up to the date of such payment of the principal, and the existing Commissioners shall thereupon, as soon as may be possible, apply the same in payment of the said debenture debt, and the interest thereof.

Payment into court by Commissioners.

3. If the existing Commissioners should be unable after diligent inquiry to ascertain the person to whom each part of the said sum secured by debentures issued under the authority of the Act of 1814, and the interest thereon is payable, or where any part thereof is payable to a person who, or whose committee or

A.D. 1877.

guardian, cannot give an effectual receipt for the same, the existing Commissioners may pay such parts of the said sum into the Court of Chancery in Ireland, under any Act for the time being in force for the relief of trustees; and upon such payment into court being made, the existing Commissioners shall be discharged from all claims on account of each such part, and of all interest thereon.

Saint Stephen's Green to be rendered suitable for a public park.

4. *At any time after the passing of this Act*, and before the *first day of July one thousand eight hundred and seventy-nine*, it shall be lawful for the said Sir Arthur Guinness to enter upon the said square, as the same is in the sixth section of this Act more particularly described, and, if necessary, to alter the present enclosure of the same, and to lay out the same as public and ornamental pleasure grounds, and to make roads, paths, and fences therein, and to erect lamps and fountains, and to lay down gas pipes and water pipes therein, and to do all such acts, matters, and things, whether of the same kind as those above mentioned or different, as may be proper for rendering the said square suitable for use as a public and ornamental park. The works which the said Sir Arthur Guinness is by this section empowered to effect shall be according to plans and specifications to be prepared by the said Sir Arthur Guinness, and to be agreed on before the commencement of the works between him and the said Commissioners of Public Works, subject to the approval of the Lord Lieutenant.

Order of Lord Lieutenant for opening Saint Stephen's Green.

5. On or before the *first day of July one thousand eight hundred and seventy-nine*, upon proof to the satisfaction of the Accountant General of the Court of Chancery in Ireland of the payment by the said Sir Arthur Guinness to the existing Commissioners of the sums herein-before mentioned in that behalf, and of the application or lodgment of the same by the existing Commissioners for the purpose of discharging the said debenture debt in the manner herein-before prescribed, the said Accountant General shall give notice of such payment and application or lodgment to the Lord Lieutenant. On or before the *same first day of July*, the Commissioners of Public Works, if they shall be satisfied that the said square has been rendered suitable for a public and ornamental park according to the plans before mentioned, shall give notice that they are so satisfied to the Lord Lieutenant. Upon the receipt of both the notices herein-before mentioned, the Lord Lieutenant shall, by order to be published in the Dublin Gazette, declare that the said square is open for a public park, to be called and known by the name of "Saint Stephen's Green."

Transfer of Saint Stephen's Green

6. Upon the making of the said order the said square in Dublin called Saint Stephen's Green, and all other property (if any) (in this

Act referred to as "Saint Stephen's Green") comprised in the said conveyance, bearing date the nineteenth day of November one thousand eight hundred and fourteen, made by the Corporation to the then Commissioners for the improvement of Saint Stephen's Green, and all the estate and interest therein of the Corporation and of the existing Commissioners, and all the ground which has been for some time before the passing of this Act enclosed within the posts and chains of Saint Stephen's Green, shall be and the same are hereby transferred to and vested for the purposes of this Act in the Commissioners of Public Works, as incorporated by the Act of the session of Parliament held in the thirty-second and thirty-third years of the reign of Her present Majesty, chapter seventy-four; and the Commissioners of Public Works shall thenceforth hold the same absolutely freed and discharged from the said conveyance, and from the rent reserved by the same, and, save as in this Act expressly provided, from all obligations, debts, and liabilities whatsoever affecting the same, and discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever.

A.D. 1877.

to the Commissioners of Public Works.

7. When and so soon as Saint Stephen's Green shall have been transferred to and vested in the Commissioners of Public Works as aforesaid (which transfer and vesting is herein-after referred to as "the transfer"), all property of whatsoever description belonging to the existing Commissioners under the Act of 1814 in their capacity as such Commissioners shall vest absolutely in the Commissioners of Public Works.

Transfer of property of existing Commissioners to Commissioners of Public Works.

8. From and after the transfer the existing Commissioners shall cease to act as such, and all the houses grounds lots and tenements surrounding Saint Stephen's Green shall be absolutely freed and discharged from the payment of any annual or other sums by direction of the Commissioners under the Act of 1814, except for the payment of any debt, or the discharge of any obligation or liability incurred before the transfer, and not otherwise satisfied or discharged by the operation of this Act, and from all liability in respect of any debentures issued under the authority of the Act of 1814, or of any moneys secured by any such debentures as aforesaid, and the Act of 1814 shall thereupon be repealed: Provided always, that, except as by this Act otherwise specially provided, such repeal shall not affect anything duly done or suffered under the Act of 1814 before the transfer.

Existing Commissioners to cease to act, and repeal of 54 G. 3. c. 208.

9. Until the transfer, the powers, authorities, privileges, and liabilities of the existing Commissioners under the Act of 1814 shall, subject to the provisions of this Act, continue in every respect as

Continuance of powers of existing Commis-

A.D. 1877.

sioners until transfer.

if this Act had not been passed: Provided always, that after the passing of this Act, the existing Commissioners shall not make any payment, enter into any contract or agreement, or do any act not necessary in the ordinary course of their business, or whereby the said Sir Arthur Guinness might be prejudicially affected in executing the powers conferred upon him by this Act, or by reason of which the Commissioners of Public Works upon the transfer may be in anywise injured or prejudicially affected, or Saint Stephen's Green may be in anywise charged or incumbered.

Contracts prior to transfer to be binding.

10. Except as is by this Act otherwise specially provided, all contracts and agreements entered into or made before the transfer by, to, or with the existing Commissioners, or any trustees or persons acting on their behalf, or by, to, or with any other person to whose rights and liabilities they have or shall have succeeded, shall be determined upon the transfer, but without prejudice to any right of action for any breach of any of such contracts which shall have theretofore occurred.

Actions, &c. not to abate.

11. Nothing in this Act contained shall release, discharge, or suspend any action, suit, or other proceeding at law or in equity which was pending by or against the existing Commissioners, or any of them, in relation to the affairs of the existing Commissioners, or to which they or any of them, in relation to such affairs, shall be parties immediately before the transfer, but every such action, suit, or other proceeding may be maintained, prosecuted, or continued by or in favour of or against the Commissioners of Public Works (as the case may be) in the same manner and as effectually and advantageously as the same might have been maintained, prosecuted, or continued by or in favour of or against the existing Commissioners, or any of them, if this Act had not been passed, the Commissioners of Public Works being in reference to the matters aforesaid in all respects substituted for the existing Commissioners.

Release of future rent.

12. From and after the *twenty-ninth day of September one thousand eight hundred and seventy-seven*, all liability to pay any rent which but for the passing of this Act would have accrued due after such day, under the above-recited deed of the nineteenth day of November one thousand eight hundred and fourteen, in respect of Saint Stephen's Green shall absolutely cease and determine; and all rights of the Corporation in respect of any such rent shall be deemed to be and the same are hereby released.

Obligation of Corporation to provide gas and water.

13. From and after the transfer the Corporation shall furnish, free of cost, such supplies of water and gas as the Commissioners of Public Works shall from time to time determine to be suitable

for the use of Saint Stephen's Green as a public and ornamental park. A.D. 1877.

Management of Saint Stephen's Green.

Commissioners of Public Works to maintain Saint Stephen's Green as a park or pleasure ground, and may erect lodges, lay out ground, &c.

14. The Commissioners of Public Works shall after the transfer maintain Saint Stephen's Green as an ornamental park or pleasure ground for the recreation or enjoyment of the public, and may, with the consent of the Commissioners of Her Majesty's Treasury, erect any lodges, ornamental buildings, or other erections thereon, and may, with the like consent, if they think fit, provide any ornamental fountains, or other ornamental waterworks therein, and employ such gate or lodge keepers and other necessary officers and servants, for the order and management thereof, in all respects as they may deem suitable and proper, and may from time to time make such alterations and improvements in the arrangement, laying out, planting, draining, and fencing of the same, for the purposes of such park or pleasure ground, and alter or pull down any building, erection, or other work therein, as they may think fit; and subject to the powers aforesaid, the Commissioners of Public Works shall at all times maintain and keep Saint Stephen's Green, and the buildings and erections thereon, and all other things thereto belonging, in good and sufficient repair and in a proper and ornamental condition, and shall allow the same to be used and enjoyed as a public park for the recreation and enjoyment of the public, and not for any other purpose; and for effecting any of the objects of this Act it shall be lawful for the Commissioners of Public Works to accept private subscriptions from persons willing to contribute towards carrying into execution the powers of this Act, or to permit such persons from time to time to contribute to the objects of this Act by the erection of such statues, or other suitable works in the said park, as the said Commissioners of Public Works may approve.

Byelaws.

Commissioners of Public Works may make byelaws.

15. At any time after the transfer, the Commissioners of Public Works may from time to time make such byelaws as they think fit for all or any of the purposes following; that is to say,

For regulating the conduct of the officers and servants of the Commissioners of Public Works:

For regulating and limiting the use and enjoyment of Saint Stephen's Green, and the times during which the same shall be open to the public, and the modes and purposes in or for which the same and each part thereof may be used by the persons frequenting the same:

A.D. 1877.

For preserving order and good conduct among persons frequenting Saint Stephen's Green, and for preventing nuisances and obstructions in or on the pathways or roads surrounding or adjoining the same, and for preventing any annoyance to the inhabitants of the neighbouring houses by the persons using the said park:

Generally for carrying into effect the provisions of this Act.

The Commissioners of Public Works may repeal, alter, amend, or vary any such byelaw, or may make a new byelaw or new byelaws in lieu thereof or in addition thereto.

Nothing in this Act contained shall authorise the making of any byelaw repugnant to law or this Act.

The Commissioners of Public Works may by any byelaw provide for the removal from the said park, or for the arrest of any person offending against such byelaw, and may impose penalties for offences against any byelaw not exceeding in respect of any offence *five pounds:* Provided always, that every such byelaw shall be so framed as to allow of part only of the maximum penalty thereby imposed being inflicted.

No byelaw made by the Commissioners of Public Works under this Act shall be of any force or effect until the same has been approved under the hand of the Chief or Under Secretary to the Lord Lieutenant, and shall have affixed thereto the seal of the Commissioners of Public Works, and shall be published as hereinafter mentioned.

Byelaws to be set up in Saint Stephen's Green.

16. Copies of all byelaws for the time being in force under this Act affecting other persons than the officers and servants of the Commissioners of Public Works shall be painted in legible characters on boards to be set up and continued at each and every of the entrances to Saint Stephen's Green, or in some conspicuous position within the same, and such boards shall from time to time be renewed, replaced, and restored when and so often as the same are destroyed, defaced, or removed: Provided always, that if any such boards be destroyed, defaced, or removed, such byelaws shall continue in force, and such penalties shall be payable respectively during such time as may be reasonably required for renewing, replacing, or restoring the same, in the same manner as if the destruction, defacement, or removal had not occurred.

Evidence of bylaws.

17. The production of a written or printed copy of the byelaws authenticated by the seal of the Commissioners of Public Works shall be evidence of the making, approval, and existence of such bylaws in all prosecutions, actions, or proceedings under or concerning the same, without adducing proof of such seal, and with

respect to the proof of the publication thereof it shall be sufficient to prove that painted boards containing copies thereof were set up and continued in manner by this Act directed, and in case of any such board having been destroyed, defaced, or removed, that it was renewed, replaced, or restored as soon as conveniently might be.

Penalty for defacing boards.

18. Any person who destroys, pulls down, injures, or defaces any board on the premises of the Commissioners of Public Works on which any such byelaw is painted or placed shall for every such offence be liable to a penalty not exceeding *five pounds.*

Recovery and application of penalties.

19. Every penalty imposed under the provisions of this Act shall be recoverable in a summary way, subject and according to the provisions of the Acts regulating the powers and duties of justices of the police district of Dublin metropolis or of the police of such district.

Part of expenses of Commissioners to be paid out of moneys voted by Parliament.

20. *The Commissioners of Public Works shall defray such of the expenses incurred in carrying this Act into execution as cannot be defrayed out of moneys received by them under this Act or applicable to the purposes of this Act, out of such moneys as may be provided by Parliament for such purpose, and shall render accounts of all moneys expended by them under this Act to the comptroller general of the receipt and issue of Her Majesty's Exchequer and auditor general of public accounts, in such manner and at such periods as the Commissioners of Her Majesty's Treasury may direct.*

Saint Stephen's Green exempt from taxes.

21. The Commissioners of Public Works shall not be assessed or rated to any county, borough, or other local rate or cess, in respect of Saint Stephen's Green or any erection thereon, or any part thereof respectively.

Saint Stephen's Green (Dublin).

A

B I L L

To vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park; and for other purposes.

(*Prepared and brought in by Sir Michael Hicks Beach and Mr. Attorney General for Ireland.*)

Ordered, by The House of Commons, *to be Printed*, 14 *May* 1877.

[Bill 167.]

Under 2 *oz.*

Saint Stephen's Green (Dublin) Bill.

[AS AMENDED BY THE SELECT COMMITTEE.]

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title.
2. Discharge of debt.
3. Payment into court by Commissioners.
4. Saint Stephen's Green to be rendered suitable for a public park.
5. Order of Lord Lieutenant for opening Saint Stephen's Green.
6. Transfer of Saint Stephen's Green to the Commissioners of Public Works.
7. Transfer of property of existing Commissioners to Commissioners of Public Works.
8. Existing Commissioners to cease to act, and repeal of 54 Geo. 3. c. 208.
9. Continuance of powers of existing Commissioners until transfer.
10. Contracts prior to transfer to be binding.
11. Recovery of rates.
12. Actions, &c. not to abate.
13. Release of future rent.
14. Obligation of Corporation to provide gas and water.

Management of Saint Stephen's Green.

15. Commissioners of Public Works to maintain Saint Stephen's Green as a park or pleasure ground, and may erect lodges, lay out ground, &c.

Byelaws.

16. Commissioners of Public Works may make byelaws.
17. Byelaws to be set up in Saint Stephen's Green.
18. Evidence of byelaws.
19. Penalty for defacing boards.
20. Recovery and application of penalties.
21. Part of expenses of Commissioners to be paid out of moneys voted by Parliament.
22. Saint Stephen's Green exempt from taxes.

A

B I L L

[AS AMENDED BY THE SELECT COMMITTEE]

TO

Vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park; and for other purposes. A.D. 1877.

WHEREAS by an Act passed in the session of Parliament held in the fifty-fourth year of the reign of King George the Third, chapter two hundred and eight, intituled "An Act for "the Improvement of the square called Saint Stephen's Green in "the city of Dublin," (in this Act referred to as "the Act of 1814,") the Lord Mayor, Recorder, Treasurer, and High Sheriff of the said city, and the representatives in Parliament for the said city, all for the time being, together with certain then inhabitants of the said square, and their successors to be elected in manner therein-after mentioned, were constituted and appointed Commissioners for carrying that Act into execution; and such Commissioners were empowered to contract for the absolute purchase of all or such part of the ground in the interior of the square called Saint Stephen's Green as they should judge necessary for the purposes of that Act, or for a grant thereof in fee farm, subject to such annual rent as might be agreed upon, and the moneys to be paid either for the absolute purchase thereof or for the annual rent to be received under such grant were to be paid out of the moneys to be raised by virtue of that Act, and the said Commissioners were empowered to contract for the making, finishing, and completing, improving, ornamenting, and enclosing of the said square; and towards making, completing, and finishing the said inclosure and improvements, and in order to create a permanent fund for that purpose, and for the payment of the purchase money of the ground in the interior of the said square, or for the annual rent thereof, all the houses, ground, lots, and tenements surrounding the said square were made liable to the annual payment of such sum as the said Commissioners should from time to time in manner therein mentioned direct, not exceeding the rate of five shillings for each foot of frontage; and in order to raise

A.D. 1877.

a sufficient sum of money for the purposes of the said Act, the said Commissioners were empowered to raise by sale or mortgage of all or any part of the said fund, or by issuing debentures thereon, bearing interest at a rate not exceeding six pounds per centum per annum, or by the yearly appropriation of any part thereof, such sum or sums of money as should or might be sufficient for the purpose of paying the purchase money or rent of the ground of the interior of the said square (as the case might be) as aforesaid, and for all other the purposes therein mentioned:

And whereas in pursuance of the provisions of the Act of 1814 the Commissioners constituted by the said Act agreed with the Right Honourable the Lord Mayor, Aldermen, and Burgesses of the said city of Dublin (in this Act referred to as "the Corporation") for a grant in fee farm of the said square at a yearly rent, and in pursuance of such agreement a conveyance by way of lease and release bearing date the nineteenth day of November one thousand eight hundred and fourteen was made to the said Commissioners by the Corporation of the land or ground in the interior of the said square, and which are the premises herein-after more particularly described, at the yearly rent of three hundred pounds late Irish currency, equal to two hundred and seventy-six pounds eighteen shillings and six-pence present currency of the United Kingdom:

And whereas since the passing of the Act of 1814, the Commissioners thereby constituted and their successors have continued to act in execution of the said Act:

And whereas the residue now remaining unpaid of the debt created under the Act of 1814 by the issue of debentures amounts to two thousand pounds or thereabouts, together with the interest thereon now due at the rate of four pounds per centum per annum:

And whereas there is within the municipal boundaries of the city of Dublin no public park, and it would be of great public advantage, and conduce to the health and enjoyment of the inhabitants of the said city, if the said square were opened for their recreation and enjoyment; and were for that purpose discharged from all estates, claims, rights, and incumbrances affecting it, and were vested in and maintained and managed by the Commissioners of Public Works in Ireland:

And whereas in furtherance of the object aforesaid it has been agreed between the Corporation and the Commissioners of Saint Stephen's Green (in this Act referred to as the "existing Commissioners"), and Sir Arthur Guinness, Baronet, one of the members elected to serve in the present Parliament for the said city of Dublin, that the said Sir Arthur Guinness should provide such funds as

A.D. 1877.

may be necessary for paying the residue now remaining unpaid of the said debenture debt, and all interest which shall accrue due thereon after the passing of this Act and until the discharge of the said debt, and should effect such improvements in the said square as shall, in the opinion of the Commissioners of Public Works in Ireland, render it suitable for a public park ; and that the Corporation should immediately after the gale day next ensuing after the passing of this Act relinquish the aforesaid yearly rent, and release the said existing Commissioners and the said square from all claims on foot thereof, and, so soon as the said square shall be opened for the purposes aforesaid, should thenceforth gratuitously supply water and gas at such time and in such quantities as may in the opinion of the said Commissioners of Public Works be required for the use of the said square as a public park; and that all the estate and interest of the existing Commissioners under the said conveyance of the nineteenth day of November one thousand eight hundred and fourteen, and all their liabilities thereunder should, so soon as the said square shall be opened for the purposes aforesaid, immediately be determined in the manner herein-after provided ; and that the said square should be vested in the Commissioners of Public Works in Ireland, (herein-after called "the Commissioners of Public Works,") discharged from all claims of the said existing Commissioners, and of the Corporation, and from all other estates, rights, and incumbrances affecting the same :

And whereas the Lords Commissioners of Her Majesty's Treasury have sanctioned the said arrangement :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited for all purposes as "The Saint Stephen's Green (Dublin) Act, 1877."

Discharge of debt.

2. *Immediately after the passing of this Act* an account shall be taken by the existing Commissioners of the sums which shall be then due for principal and interest on foot of debentures issued for moneys borrowed in pursuance of the provisions of the Act of 1814. Upon the taking of such account the said Sir Arthur Guinness shall pay to the existing Commissioners the sum which shall be ascertained to be due for principal, and for such interest as shall accrue due after the passing of this Act and up to the date of such payment of the principal, and the existing Commissioners shall

A.D. 1877.

thereupon, as soon as may be possible, apply the same in payment of the said debenture debt, and the interest thereof.

Payment into court by Commissioners.

3. If the existing Commissioners should be unable after diligent inquiry to ascertain the person to whom each part of the said sum secured by debentures issued under the authority of the Act of 1814, and the interest thereon is payable, or where any part thereof is payable to a person who, or whose committee or guardian, cannot give an effectual receipt for the same, the existing Commissioners may pay such parts of the said sum into the Court of Chancery in Ireland, under any Act for the time being in force for the relief of trustees; and upon such payment into court being made, the existing Commissioners shall be discharged from all claims on account of each such part, and of all interest thereon.

Saint Stephen's Green to be rendered suitable for a public park.

4. *At any time after the passing of this Act*, and before the *first day of July one thousand eight hundred and seventy-nine*, it shall be lawful for the said Sir Arthur Guinness to enter upon the said square, as the same is in the sixth section of this Act more particularly described, and, if necessary, to alter the present enclosure of the same, and to lay out the same as public and ornamental pleasure grounds and to make roads, paths, and fences therein, and to erect lamps and fountains, and to lay down gas pipes and water pipes therein, and to do all such acts, matters, and things, whether of the same kind as those above mentioned or different, as may be proper for rendering the said square suitable for use as a public and ornamental park. The works which the said Sir Arthur Guinness is by this section empowered to effect shall be according to plans and specifications to be prepared by the said Sir Arthur Guinness, and to be agreed on before the commencement of the works between him and the said Commissioners of Public Works, subject to the approval of the Lord Lieutenant.

Order of Lord Lieutenant for opening Saint Stephen's Green.

5. On or before the *first day of July one thousand eight hundred and seventy-nine*, upon proof to the satisfaction of the Accountant General of the Court of Chancery in Ireland of the payment by the said Sir Arthur Guinness to the existing Commissioners of the sums herein-before mentioned in that behalf, and of the application or lodgment of the same by the existing Commissioners for the purpose of discharging the said debenture debt in the manner herein-before prescribed, the said Accountant General shall give notice of such payment and application or lodgment to the Lord Lieutenant. On or before the *same first day of July*, the Commissioners of Public Works, if they shall be satisfied that the

said square has been rendered suitable for a public and ornamental park according to the plans before mentioned, shall give notice that they are so satisfied to the Lord Lieutenant. Upon the receipt of both the notices herein-before mentioned, the Lord Lieutenant shall, by order to be published in the Dublin Gazette, declare that the said square is open for a public park, to be called and known by the name of "Saint Stephen's Green."

Transfer of Saint Stephen's Green to the Commissioners of Public Works.

6. Upon the making of the said order the said square in Dublin called Saint Stephen's Green, and all other property (if any) (in this Act referred to as "Saint Stephen's Green") comprised in the said conveyance, bearing date the nineteenth day of November one thousand eight hundred and fourteen, made by the Corporation to the then Commissioners for the improvement of Saint Stephen's Green, and all the estate and interest therein of the Corporation and of the existing Commissioners, and all the ground which has been for some time before the passing of this Act enclosed within the posts and chains of Saint Stephen's Green, shall be and the same are hereby transferred to and vested for the purposes of this Act in the Commissioners of Public Works, as incorporated by the Act of the session of Parliament held in the thirty-second and thirty-third years of the reign of Her present Majesty, chapter seventy-four; and the Commissioners of Public Works shall thenceforth hold the same absolutely freed and discharged from the said conveyance, and from the rent reserved by the same, and, save as in this Act expressly provided, from all obligations, debts, and liabilities whatsoever affecting the same, and discharged from all former and other estates, rights, titles, charges, and incumbrances whatsoever.

Transfer of property of existing Commissioners to Commissioners of Public Works.

7. When and so soon as Saint Stephen's Green shall have been transferred to and vested in the Commissioners of Public Works as aforesaid (which transfer and vesting is herein-after referred to as "the transfer"), all property of whatsoever description belonging to the existing Commissioners under the Act of 1814 in their capacity as such Commissioners shall vest absolutely in the Commissioners of Public Works.

Existing Commissioners to cease to act, and repeal of 54 G. 3. c. 208.

8. From and after the transfer the existing Commissioners shall cease to act as such, and all the houses grounds lots and tenements surrounding Saint Stephen's Green shall be absolutely freed and discharged from the payment of any annual or other sums by direction of the Commissioners under the Act of 1814, except for the payment of any debt, or the discharge of any obligation or liability incurred before the transfer, and not otherwise satisfied or discharged by the operation of this Act, and from all liability in

A.D. 1877.

respect of any debentures issued under the authority of the Act of 1814, or of any moneys secured by any such debentures as aforesaid, and the Act of 1814 shall thereupon be repealed: Provided always, that, except as by this Act otherwise specially provided, such repeal shall not affect anything duly done or suffered under the Act of 1814 before the transfer.

Continuance of powers of existing Commissioners until transfer.

9. Until the transfer, the powers, authorities, privileges, and liabilities of the existing Commissioners under the Act of 1814 shall, subject to the provisions of this Act, continue in every respect as if this Act had not been passed: Provided always, that after the passing of this Act, the existing Commissioners shall not make any payment, enter into any contract or agreement, or do any act not necessary in the ordinary course of their business, or whereby the said Sir Arthur Guinness might be prejudicially affected in executing the powers conferred upon him by this Act, or by reason of which the Commissioners of Public Works upon the transfer may be in anywise injured or prejudicially affected, or Saint Stephen's Green may be in anywise charged or incumbered.

Contracts prior to transfer to be binding.

10. Except as is by this Act otherwise specially provided, all contracts and agreements entered into or made before the transfer by, to, or with the existing Commissioners, or any trustees or persons acting on their behalf, or by, to, or with any other person to whose rights and liabilities they have or shall have succeeded, shall be determined upon the transfer, but without prejudice to any right of action for any breach of any of such contracts which shall have theretofore occurred.

Recovery of rates.

11. In addition to the remedies given by the Act of 1814 for the recovery of the rates hereby charged, it shall be lawful for the existing commissioners until the transfer, and afterwards as regards any rate or rates in arrear at the time of the transfer for the Commissioners of Public Works, to sue for and recover any such rate or rates which now is or are or hereafter shall be in arrear by civil bill before the Recorder of the city of Dublin from any person or persons who shall be occupier or occupiers of any premises in respect of which such rate or rates shall be payable, or from whom the same might be recovered by distress.

Actions, &c. not to abate.

12. Nothing in this Act contained shall release, discharge, or suspend any action, suit, or other proceeding at law or in equity which was pending by or against the existing Commissioners, or any of them, in relation to the affairs of the existing Commissioners, or to which they or any of them, in relation to such affairs, shall be parties immediately before the transfer, but every such action,

suit, or other proceeding may be maintained, prosecuted, or continued by or in favour of or against the Commissioners of Public Works (as the case may be) in the same manner and as effectually and advantageously as the same might have been maintained, prosecuted, or continued by or in favour of or against the existing Commissioners, or any of them, if this Act had not been passed, the Commissioners of Public Works being in reference to the matters aforesaid in all respects substituted for the existing Commissioners.

Release of future rent.

13. From and after the *twenty-ninth day of September one thousand eight hundred and seventy-seven*, all liability to pay any rent which but for the passing of this Act would have accrued due after such day, under the above-recited deed of the nineteenth day of November one thousand eight hundred and fourteen, in respect of Saint Stephen's Green shall absolutely cease and determine; and all rights of the Corporation in respect of any such rent shall be deemed to be and the same are hereby released.

Obligation of Corporation to provide gas and water.

14. From and after the transfer the Corporation shall furnish, free of cost, such supplies of water and gas as the Commissioners of Public Works shall from time to time determine to be suitable for the use of Saint Stephen's Green as a public and ornamental park: Provided that the Commissioners of Public Works shall not at any time require such a supply of water as would necessarily impair the sufficiency of the supply of water by the corporation for domestic use or manufacturing purposes.

Management of Saint Stephen's Green.

Commissioners of Public Works to maintain Saint Stephen's Green as a park or pleasure ground, and may erect lodges, lay out ground, &c.

15. The Commissioners of Public Works shall after the transfer maintain Saint Stephen's Green as an ornamental park or pleasure ground for the recreation or enjoyment of the public, and may, with the consent of the Commissioners of Her Majesty's Treasury, erect any lodges, ornamental buildings, or other erections thereon, and may, with the like consent, if they think fit, provide any ornamental fountains, or other ornamental waterworks therein, and employ such gate or lodge keepers and other necessary officers and servants, for the order and management thereof, in all respects as they may deem suitable and proper, and may from time to time make such alterations and improvements in the arrangement, laying out, planting, draining, and fencing of the same, for the purposes of such park or pleasure ground, and alter or pull down any building, erection, or other work therein, as they may think fit; and subject to the powers aforesaid, the Commissioners of Public

A.D. 1877.

Works shall at all times maintain and keep Saint Stephen's Green, and the buildings and erections thereon, and all other things thereto belonging, in good and sufficient repair and in a proper and ornamental condition, and shall allow the same to be used and enjoyed as a public park for the recreation and enjoyment of the public, and not for any other purpose; and for effecting any of the objects of this Act it shall be lawful for the Commissioners of Public Works to accept private subscriptions from persons willing to contribute towards carrying into execution the powers of this Act, or to permit such persons from time to time to contribute to the objects of this Act by the erection of such statues, or other suitable works in the said park, as the said Commissioners of Public Works may approve.

Byelaws.

Commissioners of Public Works may make byelaws.

16. At any time after the transfer, the Commissioners of Public Works may from time to time make such byelaws as they think fit for all or any of the purposes following; that is to say,

For regulating the conduct of the officers and servants of the Commissioners of Public Works:

For regulating and limiting the use and enjoyment of Saint Stephen's Green, and the times during which the same shall be open to the public, and the modes and purposes in or for which the same and each part thereof may be used by the persons frequenting the same:

For preserving order and good conduct among persons frequenting Saint Stephen's Green, and for preventing nuisances and obstructions in or on the pathways or roads surrounding or adjoining the same, and for preventing any annoyance to the inhabitants of the neighbouring houses by the persons using the said park:

Generally for carrying into effect the provisions of this Act.

The Commissioners of Public Works may repeal, alter, amend, or vary any such byelaw, or may make a new byelaw or new byelaws in lieu thereof or in addition thereto.

Nothing in this Act contained shall authorise the making of any byelaw repugnant to law or this Act.

The Commissioners of Public Works may by any byelaw provide for the removal from the said park, or for the arrest of any person offending against such byelaw, and may impose penalties for offences against any byelaw not exceeding in respect of any offence *five pounds*: Provided always, that every such byelaw shall be so framed

as to allow of part only of the maximum penalty thereby imposed being inflicted.

No byelaw made by the Commissioners of Public Works under this Act shall be of any force or effect until the same has been publicly exhibited in St. Stephen's Green for fourteen days, a copy delivered to the town clerk, and has been afterwards approved under the hand of the Chief or Under Secretary to the Lord Lieutenant, and shall have affixed thereto the seal of the Commissioners of Public Works, and shall be published as herein-after mentioned.

Byelaws to be set up in Saint Stephen's Green.

17. Copies of all byelaws for the time being in force under this Act affecting other persons than the officers and servants of the Commissioners of Public Works shall be painted in legible characters on boards to be set up and continued at each and every of the entrances to Saint Stephen's Green, or in some conspicuous position within the same, and such boards shall from time to time be renewed, replaced, and restored when and so often as the same are destroyed, defaced, or removed: Provided always, that if any such boards be destroyed, defaced, or removed, such byelaws shall continue in force, and such penalties shall be payable respectively during such time as may be reasonably required for renewing, replacing, or restoring the same, in the same manner as if the destruction, defacement, or removal had not occurred.

Evidence of byelaws.

18. The production of a written or printed copy of the byelaws authenticated by the seal of the Commissioners of Public Works shall be evidence of the making, approval, and existence of such byelaws in all prosecutions, actions, or proceedings under or concerning the same, without adducing proof of such seal, and with respect to the proof of the publication thereof it shall be sufficient to prove that painted boards containing copies thereof were set up and continued in manner by this Act directed, and in case of any such board having been destroyed, defaced, or removed, that it was renewed, replaced, or restored as soon as conveniently might be

Penalty for defacing boards.

19. Any person who destroys, pulls down, injures, or defaces any board on the premises of the Commissioners of Public Works on which any such byelaw is painted or placed shall for every such offence be liable to a penalty not exceeding *five pounds*.

Recovery and application of penalties.

20. Every penalty imposed under the provisions of this Act shall be recoverable in a summary way, subject and according to the provisions of the Acts regulating the powers and duties of justices of the police district of Dublin metropolis or of the police of such district.

A.D. 1877.

Part of expenses of Commissioners to be paid out of moneys voted by Parliament.

21. *The Commissioners of Public Works shall defray such of the expenses incurred in carrying this Act into execution as cannot be defrayed out of moneys received by them under this Act or applicable to the purposes of this Act, out of such moneys as may be provided by Parliament for such purpose, and the accounts of all moneys expended by the Commissioners of Public Works under this Act shall be subject to the provisions of the Exchequer and Audit Departments Act,* 1866.

Saint Stephen's Green exempt from taxes.

22. The Commissioners of Public Works shall not be assessed or rated to any county, borough, or other local rate or cess, in respect of Saint Stephen's Green or any erection thereon, or any part thereof respectively.

(Dublin).

A

B I L L

[AS AMENDED BY THE SELECT COMMITTEE]

To vest Saint Stephen's Green, Dublin, in the Commissioners of Public Works in Ireland; for maintaining and regulating the same as a Public Park; and for other purposes.

(Prepared and brought in by Sir Michael Hicks Beach and Mr. Attorney General for Ireland.)

Ordered, by The House of Commons, *to be Printed, 25 June* 1877.

[Bill 216.] *Under 2 oz.*

A

BILL

TO

Amend "The Sale of Food and Drugs Act, 1875." A.D. 1877.

WHEREAS doubts have arisen with respect to the interpretation of 38 & 39 Vict. cap. 63. sec. 6. (Sale of Food and Drugs Act, 1875):

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation of 38 & 39 Vict. c. 63. s. 6.

1. In determining whether an offence has been committed under sec. 6 of 38 & 39 Vict. cap. 63. by selling to the prejudice of the purchaser, whether wholesale or retail, spirits reduced by the admixture with water, regard shall be had, not only to the extent of such admixture, but also to the price at which the spirits so reduced are sold.

Amendment.

A

B I L L

To amend "The Sale of Food and Drugs Act, 1875."

(Prepared and brought in by Mr. Isaac, Mr. Ashbury, and Mr. Herschell.)

Ordered, by The House of Commons, *to be Printed,* 25 *July* 1877.

[Bill 264.]

Under 1 *oz.*

A

B I L L

TO

Prohibit the Sale of Intoxicating Liquors on Sunday in England and Wales.

A.D. 1877.

35 & 36 Vict. c. 94.]

WHEREAS the provisions in force against the sale of fermented and distilled liquors during certain hours of the Sunday have been found to be attended with great public benefits, and it is important to extend such provisions to the other hours of Sunday:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Premises where intoxicating liquors sold to be closed on Sundays.

1. *From and after the passing of this Act*, all premises in which intoxicating liquors are sold or exposed for sale by retail shall be closed during the whole of Sunday, subject to the provisions (except as to the hours of closing on that day) of the Licensing Act, 1872.

Sale of Intoxicating Liquors on Sunday.

A

BILL

To prohibit the Sale of Intoxicating Liquors on Sunday in England and Wales.

(*Prepared and brought in by Mr. Charles Wilson, Mr. Birley, Mr. M'Arthur, Mr. Osborne Morgan, and Mr. James.*)

Ordered, by The House of Commons, *to be Printed*, 14 *February* 1877.

[Bill 83.]

Under 1 *oz.*

A

B I L L

TO

Prohibit the sale of Intoxicating Liquors on Sunday in Ireland.

A.D. 1877.

WHEREAS the sale of intoxicating liquors in Ireland is prohibited during certain hours on Sunday, and it will be for the public benefit to extend such prohibition to the whole of that day:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Extension of Acts prohibiting sale of intoxicating liquors to the whole of Sunday.

1. All the provisions of any Act now in force whereby the sale or exposing for sale of intoxicating liquors, or the opening or keeping open of any premises for the sale of intoxicating liquors, is prohibited during any hours or times on Sunday, are hereby extended to the whole of Sunday.

Acts to be construed as if whole of Sunday were substituted for hours therein named.

2. Nothing in this Act shall be deemed to prohibit the doing at any time on Sunday of any act, matter, or thing, which by the provisions of any Act now in force is authorised to be done on Sunday, during the hours or times during which the sale of intoxicating liquors is by such Act prohibited, but the provisions of all Acts relating to the sale of intoxicating liquors by retail in reference to lodgers and bonâ fide travellers, or authorising or prohibiting the doing of any act, matter, or thing, at any hours or times on Sunday during which the sale of intoxicating liquors is by the said Acts prohibited, shall be construed as if the whole of Sunday were substituted in the said Acts for the hours or times on Sunday therein named.

Penalties for selling of intoxicating liquors during prohibited hours

3. All penalties now in force under the provisions of any Act for selling or exposing for sale, or purchasing, or opening, or keeping open any premises for the sale of intoxicating liquors, or being present in or upon any such premises during any hours or times on

A.D. 1877.

extended to whole of Sunday.

Sunday, and all provisions of any Acts now in force in reference to such penalties, are hereby extended to any violation of the provisions of this Act.

Short title.

4. This Act may be cited for all purposes as "The Sale of "Liquors on Sunday (Ireland) Act, 1877."

Extension of Act.

5. This Act shall extend to Ireland only.

Sale of Intoxicating Liquors on Sunday (Ireland).

A

B I L L

To prohibit the sale of Intoxicating Liquors on Sunday in Ireland.

(*Prepared and brought in by Mr. Richard Smyth, The O'Conor Don, Mr. Charles Lewis, Mr. James Corry, Mr. William Johnston, Mr. Dease, Mr. Dickson, and Mr. Redmond.*)

Ordered, by The House of Commons, *to be Printed,* 9 *February* 1877.

[Bill 50.]

Under 1 *oz.*

A

B I L L

[AS AMENDED BY THE SELECT COMMITTEE]

TO

Prohibit the sale of Intoxicating Liquors on Sunday in Ireland.

A.D. 1877.

WHEREAS the sale of intoxicating liquors in Ireland is prohibited during certain hours on Sunday, and it will be for the public benefit to extend such prohibition to the whole of that day, and with a view to such extension otherwise to amend the law regulating licensed houses in the manner by this Act provided:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Extension of Acts prohibiting sale of intoxicating liquors to the whole of Sunday.

1. All the provisions of any Act now in force whereby the sale or exposing for sale of intoxicating liquors, or the opening or keeping open of any premises for the sale of intoxicating liquors, is prohibited during any hours or times on Sunday, are hereby extended to the whole of Sunday.

Travellers' exemption orders.

2. The licensing justices, on the occasion of any application for a certificate for a new license, or for the transfer or renewal of a license which authorises the sale of any intoxicating liquor for consumption on the premises, upon its being proved to their satisfaction that it is necessary or desirable so to do for the accommodation of bonâ fide travellers, may (if they shall think fit) grant to any person so applying for a certificate for a new license, or a transfer or renewal of a license, an order, in this Act termed a travellers' exemption order, exempting such person from the provisions of this Act, so far as the same would apply to the sale of intoxicating liquors by retail to bonâ fide travellers; and nothing in this Act shall be deemed to prohibit the person to whom such exemption or order shall be granted from doing at any time on Sunday any act, matter, or thing, which by the provisions of any Act now in force

A.D. 1877.

is authorised to be done on Sunday, during the hours or times during which the sale of intoxicating liquors is by such Act prohibited, but the provisions of all Acts relating to the sale of intoxicating liquors by retail in reference to bonâ fide travellers, or authorising or prohibiting the doing of any act, matter, or thing, at any hours or times on Sunday during which the sale of intoxicating liquors is by the said Acts prohibited, shall be construed as if the whole of Sunday were substituted in the said Acts for the hours or times on Sunday therein named: Provided that nothing in the said Acts shall, after the coming into operation of this Act, be construed as authorising any person licensed to sell intoxicating liquor to be consumed on the premises to sell such liquor to bonâ fide travellers, unless such person shall be the holder of such travellers' exemption order; and if any person, except a licensed person to whom such travellers' exemption order shall be granted, sell any intoxicating liquor on Sunday, he shall be deemed to be selling intoxicating liquor in violation of the provisions of this Act.

Penalties for selling of intoxicating liquors during prohibited hours extended to whole of Sunday.

3. All penalties now in force under the provisions of any Act for selling or exposing for sale, or purchasing, or opening, or keeping open any premises for the sale of intoxicating liquors, or being present in or upon any such premises during any hours or times on Sunday, and all provisions of any Acts now in force in reference to such penalties, are hereby extended to any violation of the provisions of this Act.

Supervision of refreshment houses.

4. The provisions of the twentieth section of the Act passed in the session of Parliament held in the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and seven, which authorise any inspector, or superintendent, or serjeant of police, or any county inspector, sub-inspector, head or other constable, to enter at any time between the hours of nine at night and seven in the morning into all houses licensed as refreshment-houses under the authority of the said Act, and into and upon the premises belonging thereto, shall be and the same are hereby extended, so as to apply as well to all the hours of the day as to the time between the hours mentioned in the said section.

Extension of the third section of 35 & 36 Vict. c. 94.

5. Any person keeping for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or keeping for sale by retail any intoxicating liquor at any place where he is not authorised by his license to sell the same, shall be subject to the several penalties enacted by the third section of the Licensing Act, 1872, with respect to the offences therein specified; and the provisions of

the said section shall extend to and include such keeping of intoxicating liquor for sale as aforesaid.

Construction of Act.

6. The Licensing Acts (Ireland), 1872–1874, as amended by this Act, and this Act, shall be construed together as one Act.

Exemptions.

7. Nothing in this Act shall be construed to apply to sales of intoxicating liquor to lodgers, or to the sale of intoxicating liquor in packet boats, or in canteens in pursuance of any Act regulating the same, or shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railroad.

Commencement of Act.

8. This Act shall come into operation on the first of October one thousand eight hundred and seventy-seven; provided that nothing herein contained shall prohibit the sale of intoxicating liquor in pursuance of any license now held until the expiration of the period for which such license has been granted.

Short title.

9. This Act may be cited for all purposes as "The Sale of "Liquors on Sunday (Ireland) Act, 1877."

Extension of Act.

10. This Act shall extend to Ireland only.

Sale of Intoxicating Liquors on Sunday (Ireland).

A

B I L L

[AS AMENDED BY THE SELECT COMMITTEE]

To prohibit the sale of Intoxicating Liquors on Sunday in Ireland.

(*Prepared and brought in by Mr. Richard Smyth, The O'Conor Don, Mr. Charles Lewis, Mr. James Corry, Mr. William Johnston, Mr. Dease, Mr. Dickson, and Mr. Redmond.*)

Ordered, by The House of Commons, *to be Printed*, 9 *May* 1877.

[Bill 160.]

Under 1 *oz.*

Settled Estates Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title.
2. Interpretation of "settlement" and "settled estates."
3. Interpretation of "the Court."
4. Power to authorise leases of settled estates.
5. Leases may contain special covenants.
6. Parts of settled estates may be leased.
7. Leases may be surrendered and renewed.
8. Power to authorise leases to extend to preliminary contracts.
9. Powers of leasing to include powers to lords of settled manors to give licenses to their copyhold or customary tenants to grant leases.
10. Mode in which leases may be authorised.
11. What evidence to be produced on an application to authorise leases.
12. After approval of a lease, Court to direct who shall be the lessor.
13. Powers of leasing may be vested in trustees.
14. Conditions that leases be settled by the Court not to be inserted in orders made under this section.
15. Conditions where inserted may be struck out. (Extended to the case of orders made subsequently to that Act.)
16. Court may authorise sales of settled estates and of timber.
17. Consideration for land sold for building may be a fee-farm rent.
18. Minerals, &c. may be excepted from sales.
19. Court may authorise dedication of any part of settled estates for streets, roads, and other works.
20. Making and executing and expenses of laying out and making and executing and maintaining streets, roads, and other works.
21. How sales and dedications are to be effected under the direction of the Court.

Clause.
22. Application by petition to exercise powers conferred by this Act.
23. With whose consent such application to be made.
24. Notice to be given to persons who do not consent to or concur in the application.
25. Court may dispense with notice under certain circumstances.
26. Court may dispense with consent having regard to the number and interests of parties.
27. Petition may be granted without consent, saving rights of non-consenting parties.
28. Notice of application to be served on all trustees, &c.
29. Notice of application to be given in newspapers.
30. No application under this Act to be granted where a similar application has been rejected by Parliament.
31. Notice of the exercise of powers to be given as directed by the Court.
32. Payment and application of moneys arising from sales or set aside out of rent, &c. reserved on mining leases.
33. Trustees may apply moneys in certain cases without application to Court.
34. Until money can be applied to be invested and dividends to be paid to parties entitled. Extended to investments in which cash under the control of the Court is authorised to be invested.
35. Court may direct application of money in respect of leases or reversions as may appear just.
36. Court may exercise powers repeatedly, but may not exercise them if expressly negatived.
37. Court not to authorise any act which could not have been authorised by the settlor.
38. Acts of the Court in professed pursuance of this Act not to be invalidated.
39. Costs.
40. Rules and orders.
41. Rules and orders to be laid before Parliament.
42. Tenants for life, &c. may grant leases for 21 years.
43. Against whom such leases shall be valid.
44. Evidence of execution of counterpart lease by lessee.
45. Provision as to infants, lunatics, &c.

Clause.
46. A married woman applying to the Court or consenting to be examined apart from her husband.
47. Examination of married woman how to be made when residing within the jurisdiction of the Court, and how when residing without such jurisdiction.
48. As to application by or consent of married women under age.
49. No obligation to make or consent to application, &c.
50. Tenants for life, &c. to be deemed entitled notwithstanding incumbrances.
51. Exception as to entails created by Act of Parliament.
52. Saving rights of lords of manors.
53. To what settlements this Act to extend.
54. Repeal.
55. Extent of Act.
56. Commencement of Act.
SCHEDULE.

A

B I L L

TO

Consolidate and amend the Law relating to Leases and Sales of Settled Estates. A.D. 1877.

WHEREAS it is expedient to consolidate and amend the law relating to leases and sales of settled estates:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "The Settled Estates Act, 1877." Short title.

2. The word "settlement" as used in this Act shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively. Interpretation of "settlement" and "settled estates." 19 & 20 Vict. c. 120. s. 1.

The term "settled estates" as used in this Act shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement; and for the purposes of the Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement. 21 & 22 Vict. c. 77. s. 1.

In determining what are settled estates within the meaning of this Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlement at the time of the said settlement taking effect. 27 & 28 Vict. c. 45. s. 3.

3. The expression "the Court" in this Act shall, so far as relates to estates in England, mean the High Court of Justice, and all causes Interpretation of "the Court."

AD. 1 877.

and matters in respect of such estates commenced or continued under this Act shall, subject to the provisions of the Judicature Acts, be assigned to the Chancery Division of the High Court of Justice in like manner as if such causes and matters had arisen under an Act of Parliament by which, prior to the passing of the Judicature Acts, exclusive jurisdiction in respect to such causes and matters had been given to the Court of Chancery, or to any judges or judge thereof respectively.

The expression "the Court" in this Act shall, so far as relates to estates in Ireland, mean the Court of Chancery in Ireland.

Power to authorise leases of settled estates. 19 & 20 Vict. c. 120. s. 2. 21 & 22 Vict. c. 77. s. 2.

4. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to authorise leases of any settled estates, or of any rights or privileges over or affecting any settled estates, for any purpose whatsoever, whether involving waste or not, provided the following conditions be observed:

First. Every such lease shall be made to take effect in possession at or within *one* year next after the making thereof, and shall be for a term of years not exceeding for an agricultural or occupation lease *twenty-one* years, and for a mining lease or a lease of water mills, way leaves, water leaves, or other rights or easements *forty* years, and for a repairing lease *sixty* years, and for a building lease *ninety-nine* years: Provided always, that any such lease (except an agricultural lease) may be for such term of years as the Court shall direct, where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term herein-before specified in that behalf:

Secondly. On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half yearly or oftener without taking any fine or other benefit in the nature of a fine: Provided always, that in the case of a mining lease, a repairing lease, or a building lease a peppercorn rent or any smaller rent than the rent to be ultimately made payable may, if the Court shall think fit so to direct, be made payable during all or any part of the first *five* years of the term of the lease:

19 & 20 Vict. c. 120. s. 2.

Thirdly. Where the lease is of any earth, coal, stone, or mineral, a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person

who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth, coal, stone, or mineral for his own benefit, *one fourth* part of such rent, and otherwise *three fourth* parts thereof; and in every such lease sufficient provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees or otherwise as the Court shall deem expedient:

Fourthly. No such lease shall authorise the felling of any trees except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations, or other works authorised by the lease:

Fifthly. Every such lease shall be by deed, and the lessee shall execute a counterpart, and every such lease shall contain a condition for re-entry on nonpayment of the rent for a period of *twenty-eight* days after it becomes due, or for some less period to be specified in that behalf.

Leases may contain special covenants. 19 & 20 Vict. c. 120. s. 3.

5. Subject and in addition to the conditions herein-before mentioned, every such lease shall contain such covenants, conditions, and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise.

Parts of settled estates may be leased. 19 & 20 Vict. c. 120. s. 4.

6. The power to authorise leases conferred by this Act shall extend to authorise leases either of the whole or any parts of the settled estates, and may be exercised from time to time.

Leases may be surrendered and renewed. 19 & 20 Vict. c. 120. s. 5. 21 & 22 Vict. c. 77. s. 5.

7. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorise leases conferred by this Act shall extend to authorise new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

Power to authorise leases to extend to preliminary contracts. 19 & 20 Vict. c. 120. s. 6.

8. The power to authorise leases conferred by this Act shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

Powers of leasing to include powers to lords of settled manors to give licenses to their copyhold or customary tenants to grant leases. 21 & 22 Vict. c. 77. s. 3.

9. All the powers to authorise and to grant leases contained in this Act shall be deemed to include powers to the lords of settled manors to give licenses to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorised or granted of freehold hereditaments under this Act.

Mode in which leases may be authorised. 19 & 20 Vict. c. 120. s. 7.

10. The power to authorise leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing, in conformity with the pro-

A.D. 1877.

visions of this Act, shall be vested in trustees in manner hereinafter mentioned.

What evidence to be produced on an application to authorise leases. 19 & 20 Vict. c. 120. s. 8.

11. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value, and circumstances of the estate, and the terms and conditions on which leases thereof ought to be authorised.

After approval of a lease, Court to direct who shall be the lessor. 19 & 20 Vict. c. 120. s. 9.

12. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor; and the lease or contract executed by such person or persons shall take effect in all respects as if he or they was or were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement, and had immediately afterwards settled the same according to the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Powers of leasing may be vested in trustees. 19 & 20 Vict. c. 120. s. 10.

13. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly either in the existing trustees of the settlement or in any other persons, and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct; and in every such case the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power, and the Court may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Conditions that leases be settled by the Court not to be inserted in orders made under this section. 27 & 28 Vict. c. 45. s. 1.

14. Provided always, that in orders under this Act for vesting any powers of leasing in any trustees or other persons, no conditions shall be inserted requiring that the leases thereby authorised should be submitted to or be settled by the Court or a judge thereof, or be made conformable with a model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the Court that there is some special reason rendering the insertion of such a condition necessary or expedient.

A.D. 1877.

15. Provided also, that in all cases of orders (whether under this Act or under the corresponding enactment of the Acts hereby repealed) in which any such condition as last aforesaid shall have been inserted, it shall be lawful for any party interested to apply to the Court to alter and amend such order by striking out such condition, and the Court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but nothing herein contained shall make it obligatory on the Court to act under this provision in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the Court that there is any special reason why in the case in question such a condition is necessary or expedient.

Conditions where inserted may be struck out. 27 & 28 Vict. c. 45. s. 2. (Extended to the case of orders made subsequently to that Act.)

16. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to authorise a sale of the whole or any parts of any settled estates or of any timber (not being ornamental timber) growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

Court may authorise sales of settled estates and of timber. 19 & 20 Vict. c. 120. s. 11.

17. When any land is sold for building purposes it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

Consideration for land sold for building may be a fee farm rent. 19 & 20 Vict. c. 120. s. 12.

18. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Minerals, &c. may be excepted from sales. 19 & 20 Vict. c. 120. s. 13.

19. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the Court may direct that the parts so laid out shall remain vested in the trustees of the

Court may authorise dedication of any part of settled estates for streets, roads, and other works. 19 & 20 Vict. c. 120. s. 14.

A.D. 1877.

settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the Court shall be deemed advisable.

Making and executing and expenses of laying out and making and executing and maintaining streets, roads, and other works. 39 & 40 Vict. c. 30. s. 1.

20. Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, including all necessary or proper fences, pavings, connexions, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income, or accumulations during such period or periods of time as to the Court shall seem advisable.

How sales and dedications are to be effected under the direction of the Court. 19 & 20 Vict. c. 120. s. 15.

21. On every sale or dedication to be effected as herein-before mentioned the Court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication, and so as to operate (if necessary) by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Application by petition to exercise powers conferred by this Act. 19 & 20 Vict. c. 120. s. 16.

22. Any person entitled to the possession or to the receipt of the rents and profits of any settled estates for a term of years determinable on his death, or for an estate for life or any greater estate, may apply to the Court by petition in a summary way to exercise the powers conferred by this Act.

With whose consent such application to be made. 19 & 20 Vict. c. 120. s. 17.

23. Subject to the exceptions herein-after contained, every application to the Court must be made with the concurrence or consent of the following parties; namely,

Where there is a tenant-in-tail under the settlement in existence and of full age, then the parties to concur or consent shall be

such tenant-in-tail, or if there is more than one such tenant-in-tail, then the first of such tenants-in-tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant-in-tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail;

And in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child.

Notice to be given to persons who do not consent to or concur in the application. 37 & 38 Vict. c. 33. s. 2.

24. Provided always, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the Court to which the application shall be made shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application, or submits his rights or interests so far as they may be affected by such application to be dealt with by the Court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with notice under certain circumstances. 39 & 40 Vict. c. 17. s. 3.

25. Provided also, that where on an application under this Act the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject matter of the application, then and in any such case the Court, if it shall think fit, either on the ground of the rights or interests of such person being small or remote, or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

Court may dispense with consent, having regard to the number and

26. An order may be made upon any application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application, and who

A.D. 1877.

interests of parties. 37 & 38 Vict. c. 120. s. 3.

dissent therefrom or who submit or are to be deemed to submit their rights or interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

Petition may be granted without consent saving rights of non-consenting parties. 19 & 20 Vict. c. 120. s. 18.

27. Provided nevertheless, that it shall be lawful for the Court, if it shall think fit, to give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought in the opinion of the Court to be excepted.

Notice of application to be served on all trustees, &c. 19 & 20 Vict. c. 120. s. 19.

28. Notice of any application to the Court under this Act shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required, and on any other parties who in the opinion of the Court ought to be so served, unless the Court shall think fit to dispense with such notice.

Notice of application to be given in newspapers. 19 & 20 Vict. c. 120. s. 20.

29. Notice of any application to the Court under this Act shall be inserted in such newspapers as the Court shall direct, and any person or body corporate, whether interested in the estate or not, may apply to the Court of Chancery by motion for leave to be heard in opposition to or in support of any application which may be made to the Court under this Act; and the Court is hereby authorised to permit such person or corporation to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise, and in such manner, as it shall think fit.

No application under this Act to be granted where a similar application has been rejected by Parliament. 19 & 20 Vict. c. 120. s. 21.

30. The Court shall not be at liberty to grant any application under this Act in any case where the applicant, or any party entitled, has previously applied to either House of Parliament for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the Bill may have been referred.

Notice of the exercise of powers to be given as directed by the Court. 19 & 20 Vict. c. 120. s. 22.

31. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Act shall be placed on the settlement or on any copies thereof, or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

A.D. 1877.

Payment and application of moneys arising from sales or set aside out of rent, &c. reserved on mining leases. 19 & 20 Vict. c. 120. s. 23.

32. All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone, or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same, so far as relates to estates in England, shall be paid into Court ex parte the applicant in the matter of this Act, and so far as relates to estates in Ireland, shall be paid into the Bank of Ireland to the account of the Accountant-General ex parte the applicant in the matter of this Act; and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes, namely,—

The purchase or redemption of the land tax, or the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts; or

The purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

The payment to any person becoming absolutely entitled.

Trustees may apply moneys in certain cases without application to Court. 19 & 20 Vict. c. 120. s. 24.

33. The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees (if any) without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested, and dividends to be paid to parties entitled. 19 & 20 Vict. c. 120. s. 25. (Extended to investments in which cash under the control of the Court is authorised to be invested.)

34. Until the money can be applied as aforesaid, the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorised to be invested, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Court may direct application of money in respect of leases or revisions as may appear just. 8 Vict. c. 18. s. 74.

35. Where any purchase money paid into court under the provisions of this Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as

A.D. 1877.

they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court may exercise powers repeatedly, but may not exercise them if expressly negatived. 19 & 20 Vict. c. 120. s. 26.

36. The Court shall be at liberty to exercise any of the powers conferred on it by this Act, whether the Court shall have already exercised any of the powers conferred by this Act in respect of the same property or not; but no such powers shall be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement, or may reasonably be inferred therefrom or from extrinsic circumstances or evidence: Provided always, that the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

Court not to authorise any act which could not have been authorised by the settlor. 19 & 20 Vict. c. 120. s. 27.

37. Nothing in this Act shall be construed to empower the Court to authorise any lease, sale, or other act beyond the extent to which in the opinion of the Court the same might have been authorised in and by the settlement by the settlor or settlors.

Acts of the Court in professed pursuance of this Act not to be invalidated. 19 & 20 Vict. c. 120. s. 28.

38. After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorise the same, except that no such lease, sale, or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained in the case where such concurrence or consent has not been obtained and such service has not been made or dispensed with.

Costs. 19 & 20 Vict. c. 120. s. 29.

39. It shall be lawful for the Court, if it shall think fit, to order that all or any costs or expenses of all or any parties of and incident to any application under this Act shall be a charge on the hereditaments which are the subject of the application, or on any other hereditaments included in the same settlement and subject to the same limitations; and the Court may also direct that such costs and expenses shall be raised by sale or mortgage of a sufficient part of such hereditaments, or out of the rents or profits thereof, such costs and expenses to be taxed as the Court shall direct.

Rules and orders. 19 & 20 Vict. c. 120. s. 30.

40. General rules and orders of Court for carrying into effect the purposes of this Act, and for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates, and for regulating

A.D. 1877.

39 & 40 Vict. c. 59. s. 17.

the fees and allowances to all officers and solicitors of the Court in respect to such matters, shall be made so far as relates to proceedings in England by any *three* or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and so far as relates to proceedings in Ireland by any *two* or more of the following persons, of whom the Lord Chancellor of Ireland shall be one, namely, the Lord Chancellor of Ireland, the Irish Master of the Rolls, and the Lord Justice of the Court of Appeal in Chancery in Ireland, and such rules and orders may from time to time be rescinded or altered by the like authorities respectively, and all such rules and orders shall take effect as general orders of the Court.

Rules and orders to be laid before Parliament. 19 & 20 Vict. c. 120. s. 31.

41. All general rules and orders made as aforesaid shall be laid before each House of Parliament within *forty* days after the making thereof if Parliament is then sitting, or if not, within *forty* days of the then next ensuing session, and if an address is presented to Her Majesty by either House of Parliament within the next subsequent forty days on which the said House shall have sat, praying that any such rule or order may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule or order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Tenants for life, &c. may grant leases for 21 years. 19 & 20 Vict. c. 120. s. 32.

42. It shall be lawful for any person entitled to the possession or to the receipt of the rents and profits of any settled estates for an estate for life, or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, unless the settlement shall contain an express declaration that it shall not be lawful for such person to make such demise; and also for any person entitled to the possession or to the receipt of the rents and profits of any unsettled estates as tenant by the courtesy, or in dower, or in right of a wife who is seised in fee, without any application to the Court, to demise the same or any part thereof, except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, from time to time, for any term not exceeding *twenty-one* years to take effect in

A.D. 1877.

possession; provided, that every such demise be made by deed, and the best rent that can reasonably be obtained be thereby reserved, without any fine or other benefit in the nature of a fine, which rent shall be incident to the immediate reversion; and provided that such demise be not made without impeachment of waste, and do contain a covenant for payment of the rent, and such other usual and proper covenants as the lessor shall think fit, and also a condition of re-entry on nonpayment of the rent for a period of *twenty-eight* days after it becomes due, or for some less period to be specified in that behalf; and provided a counterpart of every deed of lease be executed by the lessee.

Against whom such leases shall be valid. 19 & 20 Vict. c. 120. s. 33. 21 & 22 Vict. c. 77. s. 8. 19 & 20 Vict. c. 120. s. 33.

43. Every demise authorised by the last preceding section shall be valid against the person granting the same, and all other persons entitled to estates subsequent to the estate of such person under or by virtue of the same settlement if the estates be settled, and in the case of unsettled estates against the wife of any husband granting such demise of estates to which he is entitled in right of such wife, and against all persons claiming through or under the wife or husband (as the case may be) of the person granting the same.

Evidence of execution of counterpart lease by lessee. 19 & 20 Vict. c. 120. s. 34.

44. The execution of any lease by the lessor or lessors shall be deemed sufficient evidence that a counterpart of such lease has been duly executed by the lessee as required by this Act.

Provision as to infants, lunatics, &c. 19 & 20 Vict. c. 120. s. 36.

45. All powers given by this Act, and all applications to the Court under this Act, and consents to and notifications respecting such applications, may be executed, made, or given by, and all notices under this Act may be given to guardians on behalf of infants, and by or to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation, or insolvents: Provided nevertheless, that in the cases of infant or lunatic tenants-in-tail no application to the Court or consent to or notification respecting any application may be made or given by any guardian or committee without the special direction of the Court.

A married woman applying to the Court, or consenting to be examined apart from her husband. 19 & 20 Vict. c. 120. s. 37.

46. Where a married woman shall apply to the Court, or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or consent to such application; and such examination shall be made whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman, independently of her hus-

band or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by this Act, and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding. A.D. 1877.

Examination of married woman how to be made when residing within the jurisdiction of the Court, and how when residing without such jurisdiction. 19 & 20 Vict. c. 120. s. 38. 21 & 22 Vict. c. 77. s. 6.

47. The examination of such married woman when resident within the jurisdiction of the Court to which such application is made, shall be made either by the Court or by some solicitor duly appointed by the Court for that purpose, who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same. And when the married woman is resident out of the jurisdiction of the Court to which such application is made, her examination may be made by any person appointed for that purpose by the Court, whether he is or is not a solicitor of the Court, and such person shall certify under his hand to the effect herein-before provided in respect of the examination of a married woman resident within the jurisdiction. And the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the Court.

As to application by or consent of married women under age. 19 & 20 Vict. c. 120. s. 39.

48. Subject to such examination as aforesaid, married women may make or consent to any applications, whether they be of full age or infants.

No obligation to make or consent to application, &c. 19 & 20 Vict. c. 120. s. 40.

49. Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the Court or to exercise any power.

Tenants for life, &c. to be deemed entitled notwithstanding incumbrances. 19 & 20 Vict. c. 120. s. 41.

50. For the purposes of this Act, a person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of estates, although his estate may be charged or incumbered either by himself or by the settlor, or otherwise howsoever, to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and profits as aforesaid unless they shall concur therein.

Exception as to entails created by Act of Parliament. 19 & 20 Vict. c. 120. s. 42.

51. Provided always, that nothing in this Act shall authorise any sale or lease beyond the term of twenty-one years of any settled estates, in which under the Act of the thirty-fourth and thirty-fifth years of King Henry the Eighth, chapter twenty, "to embar feigned "recovery of lands wherein the King is in reversion," or under

A.D. 1877.

any other Act of Parliament, the tenants-in-tail are restrained from barring or defeating their estates tail, or where the reversion is vested in the Crown.

Saving rights of lords of manors. 19 & 20 Vict. c. 120. s. 43.

52. Nothing in this Act shall authorise the granting of a lease of any copyhold or customary hereditaments not warranted by the custom of the manor without the consent of the lord, nor otherwise prejudice or affect the rights of any lord of a manor.

To what settlements this Act to extend. 19 & 20 Vict. c. 120. s. 44.

53. This Act shall, except as herein-after provided, apply to all matters existing at the time of the passing of this Act, whether proceedings are actually pending or not, and any proceedings in any such matter may be continued or taken under this Act as if the matter originated under this Act, or may be continued or taken under the Acts hereby repealed, or partly under this Act and partly under the said repealed Acts as occasion may require: Provided always, that the provisions in this Act contained respecting demises to be made without application to the Court shall extend only to settlements made after the first day of November one thousand eight hundred and fifty-six.

Repeal.

54. The Acts specified in the schedule to this Act are hereby repealed to the extent in the third column in the schedule mentioned: Provided always, that this repeal shall not affect anything done or any proceeding taken under any enactment hereby repealed.

Extent of Act. 19 & 20 Vict. c. 120. s. 45.

55. This Act shall not extend to Scotland.

Commencement of Act. 19 & 20 Vict. c. 120. s. 46.

56. This Act shall commence on the *first day of November one thousand eight hundred and seventy-seven.*

SCHEDULE.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 & 20 Vict. c. 120.	An Act to facilitate leases and sales of Settled Estates.	The whole Act.
21 & 22 Vict. c. 77.	An Act to amend and extend the Settled Estates Act of 1856.	The whole Act.
27 & 28 Vict. c. 45.	An Act to further amend the Settled Estates Act of 1856.	The whole Act.
37 & 38 Vict. c. 33.	The Leases and Sales of Settled Estates Amendment Act, 1874.	The whole Act.
39 & 40 Vict. c. 30.	The Settled Estates Act, 1876 -	The whole Act.

Settled Estates.

A

B I L L

To consolidate and amend the Law relating to Leases and Sales of Settled Estates.

(*Prepared and brought in by Mr. Marten, Sir Henry Jackson, and Mr. Gregory.*)

Ordered, by The House of Commons, *to be Printed*, 9 *February* 1877.

[Bill 61.]

Under 3 *oz.*

SETTLED ESTATES BILL,

FOR

CONSOLIDATING AND AMENDING THE LEASES AND SALES OF SETTLED ESTATES ACTS. [Bill 61.]

Memorandum showing the Amendments proposed to be made by the Bill.

Clause 4, page 2. The words beginning with the word "Pro- "vided" in line 34, and ending with the word "lease" in line 38, inserted.

Clause 4, page 3, lines 15 and 16. The words "of twenty-eight "days after it becomes due, or for some less period to be specified "in that behalf," substituted for "not less than twenty-eight days "after it becomes due."

Clause 15, page 5, lines 1 to 3, both inclusive. The provisions of 27 & 28 Vict. c. 45. s. 2 extended to the case of Orders made subsequently to that Act.

Clause 20, page 6, lines 14 and 15. The words "or be raised and "paid out of the rents and profits of the settled estates, or any part "thereof," inserted.

Clause 20, page 6, the words beginning with the word "or" in line 18 to the end of the clause, inserted.

Clause 25, page 7, lines 25 to 37, both inclusive. New clause inserted, adapted from the Partition Act, 1876, authorising the court to dispense with notice under certain circumstances.

Clause 34, page 9, lines 27 to 30, both inclusive. Interim investments extended to investments in which cash under the control of the court is authorised to be invested. See 23 & 24 Vict. c. 38. s. 10; General Order in Chancery of 1st February 1861.

Clause 35, page 9. New clause as to application of moneys paid into court in respect of leases or reversions, adapted from the Lands Clauses Consolidation Act, 1845, s. 74.

Clause 38. Provisions of 19 & 20 Vict. c. 120. s. 28 extended so as to harmonise with clauses 24, 25, and 26.

Clause 40, pages 10 and 11. Provisions for making Rules and Orders assimilated to those contained in the Appellate Jurisdiction Act, 1876, s. 17.

Clause 41, page 11. Provision for laying Rules and Orders before Parliament assimilated to Supreme Court of Judicature Act, 1875, s. 25.

Clause 42, page 12, line 8. The words "of twenty-eight days after "it becomes due, or for some less period to be specified in that "behalf," substituted for the words "not less than twenty-eight "days of the rent thereby reserved, and on non-observance of "any of the covenants or conditions therein contained," so as to correspond with clause 4, subsection 5.

Clause 45, page 12. Provisions as to infants, lunatics, &c., extended so as to include notifications and notices under the Bill.

LORDS AMENDMENTS

TO THE

SETTLED ESTATES BILL.

Note.—*The page and line refer to the Bill* (49.) *as first printed by the Lords.*

Page 1.

Clause 2, line 19, leave out ("the") and insert ("this")

Page 5.

Clause 17, lines 39 and 40, leave out from ("income") to the end of the clause.

Page 9.

Clause 31, line 5, after ("shall") insert ("if the Court shall "so direct, but not otherwise,")

Page 15.

Clause 55, line 24, after ("in") insert ("respect of")

line 26, leave out ("King") and insert ("King's "Majesty")

Page 16.

Clause 58, lines 5 and 6, leave out ("to the extent in the third column in the schedule mentioned")

In the schedule, leave out the third column.

[Bill 200.]

LORDS AMENDMENTS

TO THE

SETTLED ESTATES BILL.

Ordered, by The House of Commons, *to be Printed*,
18 *June* 1877.

[Bill 200.]

Under 1 *oz.*

Sheriff Courts (Scotland) Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title.
2. Commencement of Act.
3. Appointment of salaried sheriffs substitute vested in Her Majesty.
4. Tenure of office of salaried sheriffs substitute.
5. Appointment of salaried procurators fiscal vested in Secretary of State. Their tenure of office.
6. Procurator fiscal may appoint depute with consent of Lord Advocate.
7. Sheriffs jurisdiction extended to certain questions of heritable right or title, &c.
8. Provisions as to actions, &c. made by this Act competent in the sheriff court.
9. How value of estate shall be determined.
10. Deed may be set aside by exception.

[Bill 209.] A

A

B I L L

TO

Amend the Law in regard to the appointment of Sheriffs Substitute and Procurators Fiscal in Scotland; to extend the jurisdiction of and amend the procedure in the Sheriff Courts of Scotland; and for certain other purposes connected therewith. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act, 1877.

Commencement of Act.

2. Except in so far as otherwise expressly provided, this Act shall commence and take effect on and immediately after the *first day of October one thousand eight hundred and seventy-seven.*

Appointment of salaried sheriffs substitute vested in Her Majesty.

3. From and after the passing of this Act the right of appointing to the salaried office of sheriff substitute, heretofore belonging to sheriffs, shall be transferred to, vested in, and exercised by Her Majesty, her heirs and successors, on the recommendation of one of Her Majesty's Principal Secretaries of State.

Tenure of office of salaried sheriffs substitute.

4. No person holding the office of sheriff substitute at the passing of this Act, and receiving salary on that account, and no person who may hereafter be appointed to the office of salaried sheriff substitute by virtue of the provisions of this Act, shall be removable from office, except by one of Her Majesty's Principal Secretaries of State, upon a report by the Lord President of the Court of Session and the Lord Justice Clerk for the time being.

Appointment of salaried procurators fiscal vested in Secretary of State.

5. From and after the passing of this Act the right of appointing to the salaried office of procurator fiscal in the sheriff courts, hitherto belonging to sheriffs, shall be transferred to, vested in, and exercised by any one of Her Majesty's Principal Secretaries of

A.D. 1877.

Their tenure of office.

State; and every person holding the office of procurator fiscal in any sheriff court at the passing of this Act, and receiving salary on that account, and every person who may be hereafter appointed to the said office, shall hold office during pleasure, and shall be removable from office by any one of Her Majesty's Principal Secretaries of State.

Procurator fiscal may appoint depute with consent of Lord Advocate.

6. No sheriff shall have power, after the passing of this Act, to nominate or appoint any person to perform the duties of procurator fiscal, either with or without salary; but it shall be lawful for a procurator fiscal, with the leave of the Lord Advocate expressed in writing, to grant a deputation to one or more of his salaried assistants, or other fit person or persons, for whose actings he shall be responsible, to appear in court and to conduct prosecutions in his name and on his behalf.

Sheriffs jurisdiction extended to certain questions of heritable right or title, &c.

7. The jurisdictions, powers, and authorities of the sheriffs and sheriffs substitute of Scotland shall be and the same are hereby extended to,—

(1.) All actions (including actions of declarator, but excluding actions of adjudication, save in so far as now competent, and excluding actions of reduction,) relating to a question of heritable right or title, where the value of the subject in dispute does not exceed the sum of *twenty pounds* by the year:

(2.) Actions of declarator for the purpose of determining any question relating to the property in, or right of succession to, movables, where the value of the subject in dispute does not exceed the sum of *five hundred pounds:*

(3.) Actions of division of commonty, and division, or division and sale, of common property, where the value of the subject in dispute does not exceed the sum of *twenty pounds* by the year:

Provided that the Act of the Parliament of Scotland passed in the year one thousand six hundred and ninety-five, intituled "Act concerning the dividing of commonties," shall, for the purposes of this Act, and subject to the limitations hereof, be read and construed as if it conferred jurisdiction upon sheriffs and sheriffs substitute in the same manner as it confers jurisdiction on the Court of Session:

(4.) Any action against a foreigner, provided—

(1.) That such action would be competent in a sheriff court against a Scotsman subject to the jurisdiction thereof; and

A.D. 1877.

(2.) That a ship or other vessel belonging to such foreigner, or of which he is part owner or master, shall have been arrested within the sheriffdom:

Actions relating to questions of heritable right or title, or to division of commonties, or division, or division and sale, of common property, raised in a sheriff court, shall be raised in the sheriff court of the county in which the property forming the subject in dispute is situated, and all parties against whom any such action may be brought shall be subject in such action to the jurisdiction of the sheriff and sheriff substitute of such county.

Nothing herein contained shall derogate from any jurisdiction, power, or authority now possessed by the sheriffs and sheriff substitute of Scotland.

Provisions as to actions, &c. made by this Act competent in the sheriff court.

8. In regard to every action brought under the preceding section in the sheriff court the following provisions shall have effect; that is to say,

(1.) If a defender shall, at any time before an interlocutor closing the record is pronounced in the action, or within six days after such an interlocutor shall have been pronounced, lodge a note in the process in the following or similar terms; that is to say,

"The Defender prays that the process may be transmitted to the Court of Session.

"[Signed by the Defender

"[Date] *or* his Law Agent.]"

it shall be the duty of the sheriff clerk forthwith to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary; and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court:

(2.) The Court of Session or either Division thereof or any Lord Ordinary therein may, if of opinion that the action might have been properly tried in the sheriff court, allow the defender who removed the action to the Court of Session, in the event of his being successful therein, such expenses only as they may consider that he would have been entitled to if successful in the action in the sheriff court.

A.D. 1877.

How value of estate shall be determined.

9. In any case of question as to the value of the subject in dispute in any action brought in a sheriff court under the provisions of this Act extending the jurisdiction of the sheriffs, the sheriff or sheriff substitute shall (in such way as he may think expedient) inquire into and determine the value, and his determination shall be final as regards the competency of bringing the action in the sheriff court.

If it shall appear to the sheriff or sheriff substitute, as the case may be, that the value exceeds the amount specified by this Act, he may dismiss the action, with or without expenses, as he shall see fit, or on the motion of the pursuer may, if he shall see fit, order the sheriff clerk to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary, and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court.

Deed may be set aside by exception.

10. When in any action competent in the sheriff court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof.

Sheriff Courts (Scotland).

A

BILL

To amend the Law in regard to the appointment of Sheriffs Substitute and Procurators Fiscal in Scotland; to extend the jurisdiction of and amend the procedure in the Sheriff Courts of Scotland; and for certain other purposes connected therewith.

(*Prepared and brought in by The Lord Advocate and Sir Henry Selwin-Ibbetson.*)

Ordered, by The House of Commons, *to be Printed*, 21 *June* 1877.

[Bill 209.]

Under 1 *oz.*

A

B I L L

TO

Constitute the Municipal town of Boyle, the Borough of Sligo, and the Municipal town of Ballina into a Parliamentary Borough, to be called the Borough of Sligo. A.D. 1877.

WHEREAS it is expedient to constitute the Municipal town of Boyle, the Borough of Sligo, and the Municipal town of Ballina into a Parliamentary Borough, to be called the Borough of Sligo:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

After 1st January 1878 Boyle, Sligo, and Ballina shall form a borough, to be called the Borough of Sligo, and shall return one member to Parliament.

1. From and after the *first day of January one thousand eight hundred and seventy-eight* the Municipal town of Boyle in the County of Roscommon, the Borough of Sligo in the County of Sligo, and the Municipal town of Ballina in the County of Mayo, shall form a borough under the name of the Borough of Sligo, and such Borough shall return one member to serve in Parliament.

Before the 31st December 1877 a register of voters for the borough of Sligo shall be formed.

2. On or before the *thirty-first of December one thousand eight hundred and seventy-seven* a register of voters for the borough of Sligo, for the year *one thousand eight hundred and seventy-eight*, shall be formed in the same manner, save as is herein-after provided, as now by law a register of voters for a borough in Ireland is formed, in all respects as if the borough of Sligo had, previously to the passing of this Act, been a borough returning a member to serve in Parliament.

The Lord Lieutenant and Privy Council shall fix the times, &c. for the several registration officers to discharge their duties, and the

3. The Lord Lieutenant, by and with the advice of Her Majesty's Privy Council in Ireland, shall, after the passing of this Act, fix the times and dates at which, for the formation of a register of voters for the borough of Sligo for the year *one thousand eight hundred and seventy-eight*, the Clerks of the Peace for the counties of Roscommon, Sligo, and Mayo, the Town Clerk of the Borough

A.D. 1877.

time the revision sessions shall be held in the year 1878.

of Sligo, the clerks of the unions in which the said town of Boyle, the Borough of Sligo, and the town of Ballina are situated, and the poor-rate collectors of such several unions, shall discharge in respect of the borough of Sligo created by this Act the duties now imposed on them by law for borough registration, and shall also fix a time, not later than the *fifteenth of December in the year one thousand eight hundred and seventy-seven*, at which a court for the revision of the list of voters and for the formation of the register of voters for the borough of Sligo created by this Act for the year *one thousand eight hundred and seventy-eight* shall be held.

Provision for revising the register of voters for the borough of Sligo in 1877.

4. For the purpose of forming a register of voters for the borough of Sligo for the year *one thousand eight hundred and seventy-eight*, the Lord Lieutenant of Ireland may appoint a barrister of not less than ten years standing to act as revising barrister of the list of voters for the borough of Sligo created by this Act for the year *one thousand eight hundred and seventy-eight;* and the barrister so appointed shall have the same power and authority in every respect, in regard to such revision, as a Chairman of a county in Ireland now has in respect of a revision of a list of voters in any borough of Ireland; and for the purpose of said revision such barrister shall hold a court of revision *in the month of December one thousand eight hundred and seventy-seven* in Boyle, Sligo, and Ballina, and shall be paid such sum in consideration of the duties performed by him as the Lord Lieutenant shall appoint.

In the first week of the session of Parliament in 1878 a writ shall issue for the election of a member for Sligo.

5. On the first day of the session of Parliament which shall be held in the year *one thousand eight hundred and seventy-eight* a writ shall issue to the Borough of Sligo for the election of a member to serve in Parliament.

The returning officer for the borough of Sligo shall be the High Sheriff of the county of Sligo, and the Town Clerk of Sligo shall be the town clerk of the borough of Sligo.

6. The High Sheriff of the county of Sligo shall be the returning officer of the borough of Sligo created by this Act, and the Town Clerk for the time being of the borough of Sligo shall be the town clerk of the parliamentary borough of Sligo.

Till a writ issues for the borough of Sligo all persons on the register for the counties of Roscommon, Sligo, and Mayo respectively may vote at any

7. Nothing in this Act contained shall affect the right of any person whose name shall be for the year *one thousand eight hundred and seventy-eight* on the register of voters for the counties of Roscommon, Sligo, or Mayo respectively to vote for any vacancy in said several counties before the issuing of the first writ for the borough of Sligo; but after the issuing of such writ, no person shall be entitled to vote at any election for the counties of Roscommon, Sligo, or Mayo respectively, or to be registered as a voter for said counties respectively, who shall not be entitled to vote at an election

for any of the said counties respectively, or to be registered as a voter for any of said counties respectively, in respect of a qualification situated elsewhere than in the parliamentary Borough of Sligo created by this Act.

election for any of these counties, but after the issuing of a writ the borough voters shall not vote for the counties.

8. For the purpose of effectually carrying out the last section of this Act, the officer having the custody of the register of voters for the county of Roscommon for the year *one thousand eight hundred and seventy-eight* shall attend with said register at the revision of voters for the Borough of Sligo directed by this Act to be held at Boyle, and the officer having the custody of the register of voters for the county of Sligo for the year *one thousand eight hundred and seventy-eight* shall attend with said register at the revision of voters for the Borough of Sligo directed by this Act to be held at Sligo, and the officer having the custody of the register of votes for the county of Mayo for the year *one thousand eight hundred and seventy-eight* shall attend with said register at the revision of voters for the Borough of Sligo directed by this Act to be held at Ballina, and at said several places the barrister appointed under this Act to revies the list of voters for the borough of Sligo shall, on each of the said several county registers which shall be produced before him, write the word "Borough" opposite to the name of each voter on said registers of the counties of Roscommon, Sligo, and Mayo respectively, whose qualification, as stated in said registers respectively, would not, after the issuing of a writ for the Borough of Sligo under the provisions of this Act, entitle such voter to vote for the counties of Roscommon, Sligo, or Mayo respectively: and at any election for the counties of Roscommon, Sligo, and Mayo respectively which may take place in the year *one thousand eight hundred and seventy-eight*, after the issue of a writ for the borough of Sligo under the provisions of this Act, the vote of any person against whose name the word "Borough" shall be written, if tendered in respect of such qualification, shall be rejected by the returning officer.

Provision for carrying out the last section.

9. This Act shall be cited for all purposes as "The Borough of Sligo Act, 1877."

Title of the Act.

Sligo Borough (Ireland).

A

BILL

To constitute the Municipal town of Boyle, the Borough of Sligo, and the Municipal town of Ballina into a Parliamentary Borough, to be called the Borough of Sligo.

(*Prepared and brought in by Sir Colman O'Loghlen, Mr. Mitchell Henry, and Captain Nolan.*)

Ordered, by The House of Commons, *to be Printed*, 12 *February* 1877.

[Bill 68.]

Under 1 *oz.*

Solicitors Examination, &c. Bill. [H.L.]

ARRANGEMENT OF CLAUSES.

Clause.

Preliminary.

1. Short title and construction of Act.
2. Extent of Act.
3. Commencement of Act.
4. Interpretation.

Examinations.

5. Certificate of having passed examinations requisite for admission as solicitor.
6. Examinations to be held under management of Incorporated Law Society.
7. Masters of Queen's Bench, Common Pleas, and Exchequer Divisions to be ex officio examiners.
8. Fees payable to Incorporated Law Society in respect of examinations.
9. Appeal to Master of the Rolls against refusal of certificate.
10. General exemptions from preliminary examination.
11. Power of judges to grant special exemptions from preliminary examination.
12. Exemption of certain barristers from intermediate examination.
13. Power of judges to provide for admission in certain cases after four years service.
14. Time of regulations coming into force.

Miscellaneous Amendments of Law.

15. Power for Master of Rolls to admit though service under articles is irregular.
16. Form of registrar's certificate.
17. Solicitors eligible to practise in ecclesiastical courts.
18. As to commissioners for taking oaths in ecclesiastical courts.

Clause.
19. Council of Incorporated Law Society may act on behalf of Society.
20. Authentication of regulations and other documents.
21. Construction of enactments referring to attorneys and examinations.

Temporary Provision and Repeal.

22. Temporary provision as to examinations.
23. Repeal of Scheduled enactments.

Schedules.

A

B I L L

INTITULED

An Act for regulating the Examination of persons applying to be admitted Solicitors of the Supreme Court of Judicature in England, and for otherwise amending the Law relating to Solicitors. A.D. 1877.

WHEREAS under or by virtue of the enactments of the Act of the sixth and seventh years of the reign of Her present Majesty, chapter seventy-three, and of the Act of the twenty-third and twenty-fourth years of the same reign, chapter one hundred and twenty-seven, and of the Supreme Court of Judicature Acts 1873 and 1875, relating to the admission of persons as solicitors of the Supreme Court, and of regulations made under the authority of those enactments, persons applying to be admitted as solicitors of the Supreme Court of Judicature in England, are (with certain exceptions) required to pass examinations known respectively as the preliminary, the intermediate, and the final examination: 36 & 37 Vict. c. 66. 38 & 39 Vict. c. 77.

And whereas under the above-mentioned enactments the power of making regulations for the conduct of the said examinations and of appointing examiners is vested in certain judges of Her Majesty's High Court of Justice:

And whereas it is expedient that such powers, subject as hereinafter mentioned, be vested in the Incorporated Law Society, and that other amendments be made in the law relating to solicitors of the Supreme Court:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Solicitors Act, 1877," and the Act of the sixth and seventh years of the Short title and construction of Act.

A.D. 1877.

reign of Her present Majesty, chapter seventy-three, "For consolidating and amending several of the laws relating to Attorneys and Solicitors practising in England and Wales," and the Act of the twenty-third and twenty-fourth years of the same reign, chapter one hundred and twenty-seven, "To amend the laws relating to Attorneys Solicitors Proctors and Certificated Conveyancers," may be respectively cited for all purposes as "The Solicitors Act, 1843," and "The Solicitors Act, 1860," and this Act shall (so far as is consistent with the tenour thereof) be construed as one with the said Solicitors Acts, 1843 and 1860, and with the other enactments for the time being in force relating to solicitors.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall, so far as regards the power of certain of the judges of Her Majesty's High Court of Justice and of the Incorporated Law Society to make regulations thereunder, and so far as regards the issue of notices and other proceedings preliminary to holding the first examinations thereunder, come into operation on the passing thereof, and for all other purposes shall come into operation on the first day of January one thousand eight hundred and seventy-eight.

Interpretation.

4. In this Act,—

"The Incorporated Law Society" or "The Society" means "The Society of Attorneys Solicitors Proctors and others not "being Barristers practising in the Courts of Law and Equity "of the United Kingdom:"

"Solicitor" means solicitor of the Supreme Court of Judicature in England:

"Preliminary examination" means an examination in general knowledge of persons becoming bound under articles of clerkship to solicitors:

"Intermediate examination" means an examination of persons bound under articles of clerkship to solicitors in order to ascertain the progress made by such persons during their articles in acquiring the knowledge necessary for rendering them fit and capable to act as solicitors:

"Final examination" means an examination of persons applying to be admitted as solicitors as well touching the articles and service as the fitness and capacity of such persons to act as solicitors, in all business and matters usually transacted by solicitors, and includes, where any allegation is made by the registrar of solicitors as to the moral unfitness of any such person to be an officer of the Supreme Court, an inquiry into the truth of such allegation.

Examinations.

A.D. 1877.

Certificate of having passed examinations requisite for admission as solicitor.

5. Subject to the exemptions allowed by this Act, or by regulations made under the authority thereof, a person shall not be admitted as a solicitor unless he has obtained from the Incorporated Law Society, or some person authorised in writing by that Society, a certificate or certificates to the effect that he has passed a preliminary, an intermediate, and a final examination.

Examinations to be held under management of Incorporated Law Society.

6. The Incorporated Law Society are hereby authorised and required to hold, at least three times in the year commencing with the first day of January one thousand eight hundred and seventy-eight, and in every succeeding year, a preliminary examination, an intermediate examination, and a final examination, and the Society shall, subject to the provisions of this Act, have the entire management and control of all such examinations, and shall have power from time to time to make regulations with respect to all or any of the following matters; (that is to say,)

(A.) With respect to the subjects for and the mode of conducting the examination of candidates; and

(B.) With respect to the times and places of examinations and the notices of examinations; and

(C.) With respect to the certificates to be given to persons of their having passed any examination; and

(D.) With respect to the appointment and removal of examiners (other than the ex-officio examiners in this Act mentioned) and with respect to the remuneration by fees or otherwise of the examiners so appointed; and

(E.) With respect to any other matter or thing as to which the society think it expedient to make regulations for the purpose of carrying this section into execution.

Any regulation made under the authority of this section may be altered or revoked by a subsequent regulation; and copies of all regulations made under the authority of this section shall be transmitted to the presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, and to the Master of the Rolls, and if within twenty-eight days after a copy of any regulation has been so transmitted, any two of those judges (the Master of the Rolls being one) signify by writing under their hands, addressed to the president or the vice-president or secretary of the Society, their dissent from such regulation or any part thereof, the same shall be of no force or effect; and if after any such regulation or any part thereof has come into force any two of those judges (the Master

A.D. 1877.

of the Rolls being one) shall signify in manner aforesaid their dissent from such regulation or any part thereof the same shall, at the expiration of two months, cease to be of any force or effect.

Masters of Queen's Bench, Common Pleas, and Exchequer divisions to be ex-officio examiners.

7. Unless and until the presidents of the Queen's Bench Division, Common Pleas Division, and Exchequer Division of the High Court of Justice, and the Master of the Rolls otherwise order, the several masters for the time being of those divisions shall be ex-officio examiners for the intermediate and the final examinations, and one of such ex-officio examiners shall act in the conduct of every such examination in conjunction with the examiners appointed by the Society in pursuance of this Act.

Fees payable to Incorporated Law Society in respect of examinations.

8. Any person applying to be examined or re-examined at a preliminary, intermediate, or final examination shall pay to the Incorporated Law Society such fees in respect of such examinations (and in such proportions and at such times) as may be from time to time determined by regulations to be made by the presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, and the Master of the Rolls, or any two of them, of whom the Master of the Rolls shall be one.

All moneys paid to the Society in pursuance of this Act in respect of the preliminary, intermediate, and final examinations shall be applied by the Society in payment of the expenses from time to time incurred by the Society with reference to such examinations, and with reference to the lectures, classes, and other teaching provided by the Society from time to time for persons bound or about to be bound under articles of clerkship to solicitors.

Appeal to Master of the Rolls against refusal of certificate.

9. Any person who has been refused a certificate of having passed an intermediate or final examination, and who objects to such refusal, whether on account of the nature or difficulty of the questions put to him by the examiners, or on any other ground whatsoever, shall be at liberty within one month next after such refusal to appeal by petition in writing to the Master of the Rolls against such refusal, such petition to be presented in such manner and subject to such regulations as the Master of the Rolls may from time to time direct.

In the meantime and until the Master of the Rolls otherwise directs, such petition shall, as to a final examination, be presented at the Petty Bag Office without the payment of any fee, and a copy of such petition shall be left therewith and shall be delivered by the clerk of the petty bag to the secretary of the Incorporated

Law Society, and the clerk of the petty bag shall also notify to such secretary the day appointed for the hearing of the petition, and the same shall be heard by the Master of the Rolls on such day after the expiration of fourteen days from the day on which such petition was presented and at such time as he may appoint.

On the hearing of any petition under this section the Master of the Rolls may make such order as to him may seem meet, and where any person who has been refused a certificate of having passed his final examination, on appeal to the Master of the Rolls, obtains an order for his admission, such order shall entitle him to a certificate from the Incorporated Law Society of his fitness and capacity to act as a solicitor, and in the usual business transacted by a solicitor, in the same manner as if he had passed his final examination.

General exemptions from preliminary examination.

10. A certificate of having passed a preliminary examination under this Act shall not be required from any person who has taken the degree of Bachelor of Arts or Bachelor of Laws in the Universities of Oxford Cambridge Dublin Durham or London, or in the Queen's University in Ireland, or the degree of Bachelor of Arts Master of Arts Bachelor of Laws or Doctor of Laws in any of the universities of Scotland, (none of such degrees being honorary degrees,) or who has been called to the degree of Utter Barrister in England, or who has passed the first public examination before moderators at Oxford or the previous examination at Cambridge, or the examination in arts for the second year at Durham, or who has passed one of the local examinations established by the University of Oxford, or one of the non-gremial examinations established by the University of Cambridge, or one of the examinations of the Oxford and Cambridge Schools Examination Board, or one of the matriculation examinations at the Universities of Dublin or London (notwithstanding he may not have been placed in the first division of such matriculation examination) or the examination for the first-class certificate of the College of Preceptors incorporated by Royal Charter in 1849.

The presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, and the Master of the Rolls, or any three of them (the Master of the Rolls being one) may make, and from time to time alter and revoke regulations extending the above exemption to any persons who pass any examination held in any of the above-mentioned universities or in the Owen's College, Manchester, or in any other university, college, or educational institution, and specified in that behalf in the said regulations.

A.D. 1877.

Power of judges to grant special exemptions from preliminary examination.

11. The presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, and the Master of the Rolls, or any one or more of them, may, where under special circumstances they or he see fit so to do, exempt any person from compliance with the enactments and regulations for the time being in force with respect to the preliminary examination either entirely or partially, or subject to any such conditions as to them or him may seem fit.

Exemption of certain barristers from intermediate examination.

12. Any person who has been called to the degree of Utter Barrister in England, and is of not less than five years standing at the bar, and has procured himself to be disbarred with a view of becoming a solicitor, and has obtained from two of the benchers of the inn to which he belongs or to which he belonged a certificate of his being a fit and proper person to practise as a solicitor, shall not be required to obtain a certificate of having passed an intermediate examination under this Act, and shall be entitled on passing a final examination under this Act (except so much of such examination as relates to articles and service under articles) to be admitted and enrolled as a solicitor.

Power of judges to provide for admission in certain cases after four years service.

13. The presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, and the Master of the Rolls, or any three of them (the Master of the Rolls being one), may make and from time to time alter and revoke regulations directing that any person having passed any examination held in the universities of Oxford Cambridge Dublin Durham or London, or in the Queen's University in Ireland, or in any of the universities in Scotland, or in the Owen's College, Manchester, or in any other university, college, or educational institution, and specified in that behalf in such regulations, may be admitted and enrolled as a solicitor after service under articles of clerkship to a practising solicitor for the term of four years, but not so as to allow in any case a less term of service than four years.

Time of regulations coming into force.

14. All regulations duly made by any of Her Majesty's judges or by the Society in pursuance of this Act before the first day of January one thousand eight hundred and seventy-eight shall come into force on that day, and on that day the general rules and regulations, dated the second day of November one thousand eight hundred and seventy-five, and the schedules thereto (with the exception of the regulations "As to re-admission and the taking out and renewal of certificates," and "As to custody of rolls and documents," and "Provisions as to notices, &c. already given,") shall cease to be of any force or effect.

Miscellaneous Amendments of Law. A.D. 1877.

Power for Master of Rolls to admit though service under articles is irregular.

15. Where any person articled to a solicitor has not served as a clerk under such articles strictly within the provisions of The Solicitors Act, 1843, and The Solicitors Act, 1860, and any Act amending the same, but subsequently to the execution of his articles bonâ fide serves (either continuously or not) one or more solicitors as an articled clerk for periods together equal in duration to the full term for which he was originally articled, and has obtained such certificates as he is required by this Act to obtain, it shall be lawful for the Master of the Rolls in his discretion, if he is satisfied that such irregular service was occasioned by accident mistake or some other sufficient cause, and that such service, although irregular, was substantially equivalent to a regular service, to admit such person to be a solicitor in the same manner as if such service had been a regular service within the meaning of the said Acts and any Act amending the same.

Form of registrar's certificate.

16. The annual certificate required by law to be obtained by every practising solicitor from the registrar of solicitors, and the declaration required to be delivered to the registrar for the purpose of obtaining such certificate, may respectively be in the forms (A) and (B) in the first schedule to this Act, or to the like effect.

Solicitors eligible to practise in ecclesiastical courts.

17. Any solicitor may practise in all courts and before all persons having or exercising power, authority, or jurisdiction in matters ecclesiastical in England, and shall be deemed to be duly qualified to practise and may practise in all matters relating to applications to obtain notarial faculties, and generally shall have and may exercise all the powers and authorities and shall be entitled to all the rights and privileges and may fulfil all the functions and duties which appertain or belong to the office or profession of a proctor, whether in the provincial, diocesan, or other jurisdictions in England.

As to commissioners for taking oaths in ecclesiastical courts.

18. Commissioners for taking oaths in the Supreme Court of Judicature in England shall be commissioners for taking oaths in or for the purpose of any of the ecclesiastical courts or jurisdictions, or matters ecclesiastical in England, or matters relating to application for notarial faculties.

Council of Incorporated Law Society may act on behalf of Society.

19. All rules and regulations acts matters and things respectively authorised or required to be made or done by the Incorporated Law Society under or in pursuance of this Act or of The Solicitors Act, 1843, or of The Solicitors Act, 1860, or under any orders rules and regulations made in pursuance thereof respectively, may be made or done by the Council for the time being of the Society on behalf of the Society.

A.D. 1877.

Authentication of regulations and other documents.

20. All rules regulations certificates notices and other documents made or issued by the Incorporated Law Society for any purpose whatever may be in writing or print, or partly in writing and partly in print, and may be signed on behalf of the Society by the secretary, or by such other officer or officers of the Society as may be from time to time prescribed by the Council.

Construction of enactments referring to attorneys and examinations.

21. All enactments referring to attorneys which are in force immediately after the coming into operation of this Act shall be construed as if the expression "solicitor of the Supreme Court" were therein substituted for the expression "attorney," and all enactments relating to the examinations of attorneys and solicitors which are in force immediately after the coming into operation of this Act shall be construed as relating to the examinations to be held in pursuance of this Act.

Temporary Provision and Repeal.

Temporary provision as to examinations.

22. All persons who before this Act comes into operation have passed a preliminary but have not passed an intermediate or final examination, and all persons who have passed an intermediate but have not passed a final examination under the enactments and regulations hereby repealed, shall be deemed respectively to have passed a preliminary or a preliminary and intermediate examination under this Act as the case may be, and all persons who have passed a final examination under the said enactments and regulations but have not been admitted shall be deemed to have passed a final examination under this Act.

Repeal of scheduled enactments.

23. The Acts mentioned in the first part of the second schedule to this Act are hereby repealed as from the first day of January one thousand eight hundred and seventy-eight, to the extent specified in the third column in the said part of that schedule, with the qualification that so much of the said Acts as is set forth in the second part of that schedule shall be re-enacted in manner therein appearing, and shall be of the same force as if enacted in the body of this Act: Provided also, that this repeal shall not affect—

(A) Anything duly done or suffered under any enactment hereby repealed; or

(B) Any right, liability, or penalty acquired, accrued, or incurred under any enactment hereby repealed, or any legal proceeding or remedy in respect of any such right, liability, or penalty, and any such legal proceeding and remedy may be carried on as if this Act had not been passed;

And the regulations made by certain of the judges of the High Court of Justice in pursuance of the power contained in section 14

of The Judicature Act, 1875, for adapting the enactments and forms therein mentioned, shall as from the said first day of January one thousand eight hundred and seventy-eight cease to be of any force or effect. A.D. 1877.

The SCHEDULES referred to in the foregoing Act.

THE FIRST SCHEDULE.

Form (A.)

Registrar's Certificate.

No. 18

Pursuant to The Solicitors' Act, 1843, and the Acts amending the same, the Incorporated Law Society, as the registrar of solicitors, hereby certifies that solicitor of the Supreme Court, whose place of business {are / is} at , hath this day left with the secretary of the said society a declaration in writing signed by (*a*) , containing his name and place or places of business, together with the term and year, or the month and year in or as of which he was admitted, and hereby further certifies that the said solicitor is duly enrolled a solicitor of the Supreme Court, and is entitled to practise as such solicitor on this certificate being duly stamped as required by law.

Given under the hand of the secretary of the Incorporated Law Society this day of 18 .

Secretary.

Produced and entered this day of 187 .

(*a*) The said solicitor *or* the said solicitor's partner on his behalf *or* the said solicitor's London agent *as the case may be. The name of the partner or agent need not be inserted here.*

*** *If this Certificate is stamped after the* 1*st January, it must be produced to the registrar of solicitors within a month of the payment of the duty.*

If admitted a notary this certificate should be entered at the Faculty Office; if a proctor it should be entered in the court in which he is admitted.

A.D. 1877.

FORM (B.)

Declaration for obtaining the Registrar's Certificate.

No. 18 .

I hereby declare that
was admitted an attorney of (*a*) , in
Term in the year 18 [*or*]
a solicitor of the Supreme Court in the month of
in the year 18 and that {my / his} place of business {is / are}
as follows (*b*) :—

Dated this day of 18 .

Signature

[Partner or London agent of the said]

To the Registrar of Solicitors.

(*a*) One court is sufficient.

(*b*) If removed since last certificate state such removal.

THE SECOND SCHEDULE.

PART I.

Enactments repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
6 & 7 Vict. c. 73.	An Act for consolidating and amending several of the laws relating to attorneys and solicitors practising in England and Wales.	Sections 15, 16, 17, 18, 20, and so much of section 30 and of the Second Schedule as relates to fees payable to the Incorporated Law Society.
23 & 24 Vict. c. 127.	An Act to amend the laws relating to attorneys, solicitors, proctors, and certificated conveyancers.	Sections 8, 9, 11, 13, 14, section 19 from the words "and after" to the end of the section; section 20 from the words "and the said Lords Chief Justices" to the words "from time to time," section 23, and the Schedules (A.) and (B.)
33 & 34 Vict. c. 28.	The Attorneys and Solicitors Act, 1870.	Section 20.

Part II.

6 & 7 Vict. c. 73. s. 15.

If the Master of the Rolls or any of the judges of the Queen's Bench Division, the Common Pleas Division, or the Exchequer Division of the High Court of Justice is, by a certificate or certificates granted in pursuance of this Act, satisfied with respect to any person applying to be admitted a solicitor of the Supreme Court that such person is duly qualified to be admitted to act as a solicitor of the Supreme Court, then and not otherwise the Master of the Rolls shall administer the requisite oath and cause such person to be admitted a solicitor of the Supreme Court, and his name to be enrolled as a solicitor of such court, which admission shall be written on parchment and signed by the Master of the Rolls.

6 & 7 Vict. c. 73. s. 20.

Such person or persons as the presidents of the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the High Court of Justice, jointly with the Master of the Rolls, shall for that purpose appoint shall have the custody and care of the rolls or books wherein persons are enrolled as solicitors of the Supreme Court, and shall be deemed and taken as the proper officer or officers for filing such affidavits as in The Solicitors Act, 1843, are mentioned, and he or they is or are hereby also respectively required from time to time, without fee or reward, other than as in the said Act mentioned, to enrol the name of every person who shall be admitted a solicitor of the Supreme Court pursuant to the directions in the said Act, and the time when admitted, in alphabetical order, in rolls or books to be kept for that purpose, to which rolls or books all persons shall and may have free access without fee or reward.

23 & 24 Vict. c. 127. s. 23.

If any solicitor of the Supreme Court, after having at any time taken out a stamped certificate, neglects for a whole year after the expiration thereof to renew the same for the following year, the registrar shall not afterwards grant a certificate to such solicitor, except under an order of the Master of the Rolls, and it shall be lawful for the Master of the Rolls to direct the registrar to issue a certificate to such person on such terms and conditions as he may think fit.

A

BILL

INTITULED

An Act for regulating the Examination of persons applying to be admitted Solicitors of the Supreme Court of Judicature in England, and for otherwise amending the Law relating to Solicitors.

(*Brought from the Lords* 7 *June* 1877.)

Ordered, by The House of Commons, *to be Printed*, 7 *June* 1877.

[Bill 190.]

Under 2 *oz.*

Solway Salmon Fisheries Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title and extent of Act.
2. Appointment of Commissioners under sign manual.
3. Commissioners to inquire as to fixed engines.
4. Amendment of provisions relating to fixed engines.
5. Certificate as to privileged engines.
6. Notices of courts of Commissioners.
7. Hearing as to legality of fixed engines.
8. Appeals.
9. Acts of the Commissioners.
10. The Treasury to fix salaries, &c., and appoint additional officers.
11. Duration of office of Commissioners.
12. Commissioners not to sit in Parliament.
13. Powers of Commissioners.
14. Penalty for false swearing.
15. Proceedings not to abate by death, &c.
16. Decisions to be final. Expenses.

A

B I L L

TO

Make certain provisions in regard to the Salmon Fisheries in the Solway Firth and its affluents. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and extent of Act.

1. This Act may be cited for all purposes as the "Solway Salmon Fisheries Commissioners (Scotland) Act, 1877," and shall extend to Scotland only.

Appointment of Commissioners under sign manual.

2. Her Majesty may by warrant under Her sign manual, on the recommendation of one of Her Majesty's Principal Secretaries of State, appoint any number of persons, not exceeding three, of whom one shall be a member of the Faculty of Advocates of Scotland (herein-after called an advocate), of not less than seven years standing at the bar, to be Commissioners under this Act during Her Majesty's pleasure, and upon every vacancy in the office of any Commissioner by death, resignation, or incapacity to act, may appoint some other fit person to fill the vacancy: Provided always, that in the case of a vacancy by the death, resignation, or incapacity of the Commissioner required by this Act to be an advocate, another advocate qualified as aforesaid shall be appointed in his place.

The Commissioners appointed under this Act shall be styled "the Special Commissioners for Solway Fisheries."

Commissioners to inquire as to fixed engines.

3. Subject to such appeal as is herein-after mentioned, the Commissioners appointed under this Act shall inquire into the legality of all fixed engines erected or used for the taking of salmon in the waters and on the shores of the Solway Firth in Scotland, as the same have been fixed under the authority of "The Salmon Fisheries (Scotland) Act, 1862," and in the rivers flowing into the same, and shall abate and remove all such fixed engines as are not proved to their satisfaction to be privileged as herein-after provided.

A.D. 1877.

Amendment of provisions relating to fixed engines.

4. In this Act, and in "The Salmon Fisheries (Scotland) Act, 1862," and in any Act therewith incorporated, "fixed engine" shall include any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a cruive or mill dam; and "privileged fixed engine" shall only include such fixed engines as were in use for taking salmon during the open season of one or more of the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, and eighteen hundred and sixty-four, in pursuance of any grant or charter or immemorial usage: Provided always, that no person shall by proving the use of different fixed engines during the said years, or any of them, be allowed to maintain a number of privileged fixed engines exceeding the greatest number of such engines in use by him during any one of the years foresaid.

Certificate as to privileged engines.

5. Where a claim is made by any person on behalf of a fixed engine that it is privileged, the Commissioners shall, on proof being given to their satisfaction that such engine is in whole or to any extent privileged, certify to that effect, and shall state in their certificate the situation and also the size and description of the engine so far as the same is privileged. A certificate given in pursuance of this section shall be deemed to be an order of the Commissioners and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be conclusive evidence that the engine is a privileged fixed engine within the meaning and for the purposes of this Act, and of "The Salmon Fisheries (Scotland) Act, 1862," and any Act therewith incorporated, but the certificate shall not render any engine legal that would be otherwise illegal by reason of its being injurious to navigation.

Notices of courts of Commissioners.

6. The Commissioners shall advertise in some newspaper circulating in the district notice of the places and times at which they are to hold courts for determining the legality of fixed engines in any part or parts of the water or shores of the Solway Firth, or of the rivers flowing into the same, at least twenty-eight days before the time at which any court mentioned therein is appointed to be held; and they shall also, at least fourteen clear days before entering upon an inquiry as to the legality of any fixed engine, serve a notice on the owner or owners of such fixed engine to appear before them at a place and time mentioned in such notice. Service of a notice under this section may be made by delivering the notice personally to such owner, or sending it by post in a registered letter to his last known place of abode, and in cases when a corporation is the owner, by delivering such notice to the

clerk to such corporation personally, or by sending the same in a registered letter to his known address. In addition to any owner, the Commissioners shall hear any person appearing before them, whether having a legal estate or interest or not having such estate or interest in any fixed engine.

Hearing as to legality of fixed engines.

7. On the appearance of the owner or other persons either for or against any fixed engine, the Commissioners shall, after receiving any competent evidence that may be tendered for or against the legality of such fixed engine, and after hearing parties, or in the absence of such persons, if they or any of them do not appear, and the Commissioners are satisfied by evidence on oath that the notices required by this Act have been duly given, the Commissioners shall decide as to the legality or illegality of the fixed engine, and in the event of their decision being in favour of its illegality, they may, by warrant under their hands, order such fixed engine to be removed within a reasonable time to be prescribed in the order, not being less than three months; and in case the owner fail to comply with such order, the Commissioners may, by warrant under their hands, authorise any constable or other person to carry the order into effect at the expense of the owner. The Commissioners may sell any fixed engine removed in pursuance of this Act and apply the proceeds of the sale in defraying any expense incident to their carrying the order into effect in reference to such fixed engine, and shall pay the surplus, if any, to the persons they may deem entitled thereto.

Appeals.

8. If any person feels aggrieved by any decision of the Commissioners he may appeal as follows; that is to say,

(1.) The appeal shall be to one of the divisions of the Court of Session in Scotland, and shall be by special case setting forth the facts and the grounds of the decision:

(2.) The special case shall be settled by the Commissioners upon the application of the appellant, to be made in writing within fourteen days after the delivery of the decision; and if the appellant be dissatisfied with the special case as settled by the Commissioners, he may have the same settled in chambers by any judge of the division of the Court of Session to which the appeal is taken:

(3.) The special case shall be signed by the Commissioners and shall be delivered by them to the appellant or to his known agent, who shall within fourteen days transmit the same to the principal clerk of session officiating in the division to which the appeal is taken:

A.D. 1877.

(4.) When any party gives in good faith notice of an appeal under this section, but omits through mistake to do some act necessary to perfect the appeal, the division to which the appeal is taken may permit an amendment in such terms as it thinks just:

(5.) After the decision of the said division has been given on a case stated as aforesaid, the Commissioners shall have the same power to enforce that decision as they would have had to enforce their own decision had it not been appealed from:

(6.) Any Act required by this section to be done by the Commissioners may be done by two Commissioners of whom the advocate herein-before mentioned shall be one.

Acts of the Commissioners.

9. All warrants for the removal of any fixed engine shall be signed by two at least of the Commissioners; and all cases relating to the removal of such fixed engine shall be tried and heard by all the Commissioners, but the opinion of two of them, of whom the said advocate shall be one, shall, in case of difference, decide any question; any other acts, except as aforesaid, authorised to be done by the Commissioners, may be done by any one of them, and any notice or other instrument under the hand of one of the Commissioners shall be deemed to be sufficiently executed.

The Treasury to fix salaries, &c. and appoint additional officers.

10. *The Commissioners of Her Majesty's Treasury may, out of moneys provided by Parliament for the purpose, pay such remuneration as they may think fit to the Commissioners hereby appointed, and may also appoint a clerk to the said Commissioners at such rate of remuneration, to be paid out of moneys provided as aforesaid, as the said Commissioners of the Treasury may think proper and necessary, and may from time to time dismiss such clerk and appoint another in his place.*

Duration of office of Commissioners.

11. The offices of the said Commissioners, and all powers, rights, and privileges thereto belonging, shall continue in force for *one year, and from thenceforth until the end of the next session of Parliament.*

Commissioners not to sit in Parliament.

12. No Commissioner shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons.

Powers of Commissioners.

13. The Commissioners may examine any witness on oath, and with respect to enforcing the attendance of witnesses and the production of deeds, books, passes, and documents shall have the same power as any judge officiating as Lord Ordinary in the Court of Session has for such or the like purposes.

Penalty for false swearing.

14. Every person who upon examination before the Commissioners wilfully gives false evidence shall be liable to the pains and penalties of perjury.

Proceedings not to abate by death, &c.

15. Proceedings before the Commissioners shall not abate by reason of any death, or transmission, or change of interest, but in any such case it shall be lawful to the Commissioners, when they shall see fit, to require notices to be given to persons becoming interested, or to make any order for continuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to the Commissioners may appear just.

Decisions to be final. Expenses.

16. Any decision of the Commissioners not appealed against in terms of this Act, and any decision of a division of the Court of Session upon any appeal, shall be final and not subject to review, and the Commissioners and the division may dispose of all questions of expenses.

Fisheries.

A

BILL

To make certain provisions in regard to the Salmon Fisheries in the Solway Firth and its affluents.

(*Prepared and brought in by The Lord Advocate and Mr. Secretary Cross.*)

Ordered, by The House of Commons, *to be Printed,* 16 *July* 1877.

[Bill 250.]

Under 1 *oz.*

South Africa Bill. [H.L.]

ARRANGEMENT OF CLAUSES.

I.—Preliminary.

Clause.

1. Short title.
2. Application of provisions referring to the Queen.

II.—Union.

3. Declaration of union and provision for its completion.
4. Naturalisation of subjects of the Orange Free State and Transvaal Republic or Union.
5. Construction of subsequent provisions of Act.
6. Provinces.

III.—Executive Power.

7. Declaration of executive power in the Queen.
8. Application of provisions referring to Governor General.
9. Great Seal.
10. Constitution of Privy Council of the Union.
11. All powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.
12. Application of provisions referring to Governor General in Council.
13. Power to Her Majesty to authorise Governor General to appoint deputies.
14. Command of armed forces to be vested in the Queen.
15. Seat of Government.

IV.—Legislative Power.

16. Constitution of Parliament.
17. Privileges, &c. of Houses.
18. First session of the Parliament.
19. Yearly session of the Parliament.

The Legislative Council.

Clause.
20. Number and constitution of Legislative Council.
21. Resignation of place.
22. Disqualification.
23. Questions as to qualifications and vacancies.
24. Voting in Legislative Council.

The House of Assembly.

25. Constitution of House of Assembly.
26. Summoning of House of Assembly.
27. Members of Council not to sit in House of Assembly.
28. As to election of Speaker of House of Assembly.
29. As to filling up vacancy in office of Speaker.
30. Speaker to preside.
31. Provision in case of absence of Speaker.
32. Voting in House of Assembly.
33. Duration of House of Assembly.
34. Decennial re-adjustment of representation.
35. Increase of number of House of Assembly.

Money Votes, Royal Assent.

36. Appropriation and Tax Bills.
37. Recommendation of money votes.
38. Royal assent to Bills, &c.
39. Disallowance by Order in Council of Act assented to by Governor General.
40. Signification of Queen's pleasure on Bill reserved.

V.—Provincial Government.

41. Appointment of Presidents of provinces.
42. Salaries of Presidents.
43. Oaths, &c. of Presidents.
44. Application of provisions referring to Presidents.

Provincial Councils.

45. Council for each province.

VI.—Distribution of Legislative Powers.

Powers of the Parliament.

Clause.
46. Legislative authority of Parliament.

Exclusive Powers of Provincial Councils.

47. Subject of exclusive provincial legislation.
48. Concurrent powers of legislation respecting immigration.
49. Appropriation, &c. of provincial revenue.
50. Distribution of powers may be varied.
51. Allowance or disallowance of provincial laws.

VII.—Revenues; Debts; Assets; Taxation.

Clause A.—Creation of Consolidated Revenue Fund.
Clause B.—Expenses of collection, &c.
Clause C.—Interest of provincial public debts.
Clause D.—Salary of Governor General.
Clause E.—Appropriation of revenue.
Clause F.—The Union may become liable to provincial debts.
Clause G.—Provincial public property.
Clause H.—Form of payments.
Clause I.—Articles duty free within Union.
Clause K.—Provincial Consolidated Revenue Fund.

VIII.—Miscellaneous Provisions.

52. Oath of allegiance, &c.
53. Continuance of existing laws, courts, officers, &c.
54. General Court of Appeal, &c.
55. Transfer of officers to the Union.
56. Appointment of new officers.
57. Treaty obligations.
58. Laws respecting natives to be reserved.
59. Amendment of Act, or Order made thereunder.

Clause.
60. Power to admit new members into the Union.
61. Power to Her Majesty to authorise annexation to Cape or Natal of certain territories.
62. Representation of new members of Union.
63. Interpretation.
SCHEDULE.

A

B I L L

INTITULED

An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union; and for purposes connected therewith. A.D. 1877.

[Note.—*The words and Clauses printed in red ink are proposed to be inserted in Committee.*]

WHEREAS proposals have been made for uniting under one Government under the Crown of the United Kingdom of Great Britain and Ireland those colonies and states of South Africa which may voluntarily elect to enter into such Union:

And whereas such Union would conduce to the welfare of the said colonies and states and promote the interests of the British Empire, and it is expedient to make provision for any two or more of the said colonies or states to unite at such time as may be found convenient:

And whereas it is expedient to declare and define the general principles on which the constitution of the legislative authority and of the Executive Government in the Union may be established, and to enable the details of the said constitution and of the administrative establishments thereunder to be provided for after the wishes and opinions of the said colonies and states with respect to such details have been duly represented to Her Majesty through their respective Legislatures:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

1. This Act may be cited as The South Africa Act, 1877. Short title.

2. The provisions of this Act referring to Her Majesty the Queen extend also to her heirs and successors. Application of provisions referring to the Queen.

A.D. 1877.

II.—Union.

Declaration of union and provision for its completion.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, to declare by Order in Council that, on and after a day therein appointed, any two or more of the colonies or states of South Africa which may so agree shall be joined or confederated together in Union under one general Government and Legislature, with such name and designation as to Her Majesty may seem fit; and on and after that day the said general Government and Legislature of the Union shall have full power and effect within the said colonies, or colonies and states which shall have so agreed.

It shall be lawful for the Queen, by and with the advice of Her Majesty's Privy Council, by any subsequent Order in Council issued before the first assembling of the Union Parliament, to alter or amend the said Order in Council, or to provide for any matters or things as to which Her Majesty is authorised by this Act to make provision, and which are not provided for in the said Order in Council; but no such Order in Council shall be issued under the provisions of this section after the first assembling of the Union Parliament.

In any such Order in Council as aforesaid the Queen may make provision for all or any of the matters as to which she is by this Act empowered to give directions, as well as for any other matters necessary to the due establishment of the Union, and before making such provision shall have regard to any representations that may be made to Her Majesty by or by the authority of the Legislature of any state or colony concerned, or by any committee or other body duly appointed by any two or more of the said Legislatures jointly to consider the subjects mentioned in this Act.

Naturalisation of subjects of the Orange Free State and Transvaal Republic or Union.

4. In the event of the admission into the Union of the Orange Free State or the South African Republic, otherwise called the Transvaal Republic, all persons at the time resident in and enjoying the rights of citizenship within the said State and Republic respectively, and not being already British subjects, shall be and they are hereby declared to be thenceforth ipso facto naturalised subjects of the Queen.

Construction of subsequent provisions of Act.

5. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect; and in the same provisions, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South African colonies or colonies and states provided for by this Act.

6. The Union shall be divided into such provinces, with such names and boundaries, as the Queen may direct. Provinces.

III.—Executive Power.

7. The Executive Government and Authority of and over the Union is hereby declared to be vested in the Queen, and may be exercised on Her Majesty's behalf by the Governor General or the officer appointed to administer the Government by or by authority of Her Majesty's Royal Letters Patent. Declaration of executive power in the Queen.

8. The provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of the Union, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Union on behalf and in the name of the Queen, by whatever title he is designated. Application of provisions referring to Governor General.

9. There shall be a Great Seal for the Union, of such device as Her Majesty may approve. Great Seal.

10. There shall be a council to aid and advise in the government of the Union, to be styled the Privy Council of the Union; and the persons who are to be members of that council shall be from time to time chosen and summoned by the Governor General from among the members of the Union Parliament and sworn in as privy councillors, and may be from time to time removed by the Governor General. Constitution of Privy Council of the Union.

11. All powers, authorities, and functions which are at the Union lawfully vested in or exercisable by the respective Governor, Lieutenant-Governor, Administrator, or President of a colony or state, with the advice, or with the advice and consent, of the Executive Council or other administrative body thereof, or in conjunction with such council or body, or with any number of members thereof, or by the said Governor, Lieutenant-Governor, Administrator, or President individually, or by Her Majesty's High Commissioner for South Africa, shall (as far as the same continue in existence and capable of being exercised after the admission of such colony or state into the Union), in relation to the Government of the Union, be vested in and exerciseable by the Governor General, with the advice, or with the advice and consent of, or in conjunction with the Privy Council of the Union, or any members thereof, or by the Governor General individually, as the case requires, subject nevertheless to be abolished or altered by the Union Parliament. All powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.

A.D. 1877.

Application of provisions referring to Governor General in Council.

12. The provisions of this Act referring to "the Governor General in Council" shall be construed as referring to the Governor General acting by and with the advice of the Privy Council of the Union, and where "the Governor General" alone is mentioned the provision shall be construed as referring to the Governor General acting on his own discretion and without such advice.

Power to Her Majesty to authorise Governor General to appoint deputies.

13. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorise the Governor General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Union, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities, and functions of the Governor General as he may deem it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General himself of any power, authority, or function.

Command of armed forces to be vested in the Queen.

14. The command-in-chief of the land and naval militia, and of all naval and military forces, of and in the Union, is hereby declared to be vested in the Queen.

Seat of Government.

15 The seat of Government of the Union shall be such place as the Queen may direct.

IV.—Legislative Power.

Constitution of Parliament.

16. There shall be one general Legislature for the Union (in this Act called "the Union Parliament"), consisting of the Queen, an Upper House herein-after styled the Legislative Council, and a House of Representatives herein-after styled the House of Assembly; provided that either of the said Houses may receive such other designation as the Queen may direct.

Privileges, &c. of Houses.

17. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and by the House of Assembly and by the members thereof respectively shall be such as are from time to time defined by Act of the Union Parliament, but so that the same shall never exceed those for the time being held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

First session of the Parliament.

18. The Union Parliament shall be called together not later than twelve months after the Union.

A.D. 1877.

Yearly session of the Parliament.

19. There shall be a session of the Union Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

The Legislative Council.

Number and constitution of Legislative Council.

20. The Legislative Council shall, subject to the provisions of this Act, consist of such number of members, representing such divisions of the Union, and being so qualified and appointed, as the Queen may direct.

Resignation of place.

21. A member of the Legislative Council may, by writing under his hand addressed to the Governor General, resign his place in the Council, and thereupon the same shall be vacant.

Disqualification.

22. The place of a member of the Legislative Council shall become vacant in any of the following cases:

(1.) If for two consecutive sessions of the Parliament he fails to give his attendance in the Council:

(2.) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to a foreign power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen, of a foreign power:

(3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter:

(4.) If he is attainted of treason or convicted of felony or of any infamous crime:

(5.) If he ceases to possess the required qualification as member.

Questions as to qualifications and vacancies.

23. If any question arises respecting the qualification of a member of the Legislative Council or a vacancy in the said Council the same shall be heard and determined by the said Council.

Voting in Legislative Council.

24. Questions arising in the Legislative Council shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

The House of Assembly.

Constitution of House of Assembly.

25. The House of Assembly shall, subject to the provisions of this Act, consist of elected members, representing in fair proportions the various provinces of the Union, and until the Union Parliament otherwise provides, the provinces shall, for the purposes of the election of members to serve in the House of Assembly, be

A.D. 1877.

divided into such electoral districts returning such number of members respectively, and the electors and members shall have such qualifications, and the elections shall be conducted according to such rules and regulations, as the Queen may direct.

Summoning of House of Assembly.

26. The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of the Union, summon and call together the House of Assembly.

Members of Council not to sit in House of Assembly.

27. A member of the Legislative Council shall not be capable of being elected or of sitting or voting as a member of the House of Assembly.

As to election of Speaker of House of Assembly.

28. The House of Assembly on its first assembling after a general election shall proceed with all practicable speed to elect one of its members to be Speaker.

As to filling up vacancy in office of Speaker.

29. In case of a vacancy happening in the office of Speaker by death, resignation, or otherwise, the House of Assembly shall with all practicable speed proceed to elect another of its members to be Speaker.

Speaker to preside.

30. The Speaker shall preside at all meetings of the House of Assembly.

Provision in case of absence of Speaker.

31. In case of the absence for any reason of the Speaker from the chair of the House of Assembly for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges, and duties of Speaker.

Voting in House of Assembly.

32. Questions arising in the House of Assembly shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Duration of House of Assembly.

33. Every House of Assembly shall continue for such period as the Queen may direct from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor General).

Decennial re-adjustment of representation.

34. A census of the Union shall be taken in the year one thousand eight hundred and ninety-one, and at the end of each subsequent period of ten years, and on the completion of every such decennial census, the representation of the provinces may be re-adjusted by such authority, in such manner, and from such times as the Union Parliament from time to time provides, subject and according to such rules as the Queen may direct.

Such re-adjustment shall not take effect until the termination of the then existing Parliament. A.D. 1877.

35. The number of members of the House of Assembly may be from time to time increased by the Union Parliament, provided that the proportionate representation for the time being in force of the provinces is not thereby disturbed. Increase of number of House of Assembly.

Money Votes, Royal Assent.

36. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Assembly. Appropriation and Tax Bills.

37. It shall not be lawful for the House of Assembly to adopt or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message from the Governor General in the session in which such vote, resolution, address, or Bill is proposed. Recommendation of money votes.

38. Where a Bill passed by the Houses of the Union Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds such assent, or that he reserves the Bill for the signification of the Queen's pleasure, or that he will be prepared to assent thereto, subject to certain amendments to be specified by him. Royal Assent to Bills, &c.

39. Where the Governor General assents to a Bill in the Queen's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council, within two years after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, by speech or message to each of the Houses of the Union Parliament or by proclamation, shall annul the Act from and after the day of such signification. Disallowance by Order in Council of Act assented to by Governor General.

40. A Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by speech or message to each of the Houses of the Union Parliament or by proclamation, that it has received the assent of the Queen in Council. Signification of Queen's pleasure on Bill reserved.

A.D. 1877.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of the Union.

V.—Provincial Government.

Appointment of Presidents of provinces.

41. Each province shall be presided over by a Chief Executive Officer bearing such title and appointed and removable in such manner as the Queen may direct.

Salaries of Presidents.

42. Until altered by Act of the Union Parliament, the salaries of such officers shall be such as the Queen may direct.

Oaths, &c. of Presidents.

43. Every such officer shall, before assuming the duties of his office, make and subscribe before the Governor General, or some person authorised by him, oaths of allegiance and office similar to those taken by the Governor General.

Application of provisions referring to Presidents.

44. The provisions of this Act referring to such officer shall extend and apply to the Chief Executive Officer or Administrator for the time being carrying on the Government of any province, by whatever title he is designated.

Provincial Councils.

Council for each province.

45. There shall be a council for each province, consisting of the Chief Executive Officer and of such number of councillors elected in such manner and for such term as the Queen may direct.

VI.—Distribution of Legislative Powers.

Powers of the Union Parliament.

Legislative authority of Parliament.

46. It shall be lawful for the Queen, by and with the advice and consent of the Legislative Council and House of Assembly, to make laws for the peace, order, and good government of the Union, in relation to all matters not coming within the classes of subjects by this Act assigned to the councils of the provinces; and for greater certainty it is hereby declared that (notwithstanding anything in this Act) the legislative authority of the Union Parliament extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,

1. The qualification of electors and members of the Legislative Council and House of Assembly, and other questions relating to the constitution, privileges, and proceedings of either of the said bodies.

The public debt and property.

2. The regulation of trade and commerce.

The raising of money by any mode or system of taxation.

The borrowing of money on the public credit of the Union.

Postal service and telegraphs.

3. The census and statistics.

4. Militia, military and naval service, and defence, saving all matters and things relating to the troops, ships, property, and prerogatives of the Crown not heretofore placed under the jurisdiction of the Colonial Governments.

The fixing of and providing for the salaries and allowances of civil and other officers of the Government of the Union.

5. Beacons, buoys, lighthouses.

6. Navigation and shipping.

7. Quarantine and the establishment and maintenance of marine hospitals.

8. Fisheries.

9. Bridges or ferries between a province and a foreign state or between two provinces.

Currency and coinage.

10. Banking, incorporation of banks, and the issue of paper money.

11. Savings banks.

12. Weights and measures.

13. Bills of exchange and promissory notes.

14. Interest.

15. Legal tender.

16. Bankruptcy and insolvency.

17. Patents of invention and discovery.

18. Copyrights.

19. Native affairs.

20. Naturalization and aliens.

21. Marriage and divorce.

22. The criminal law.

23. The establishment, maintenance, and management of gaols, hospitals, asylums, and other public institutions for the use of the Union generally.

24. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the councils of the provinces.

25. Such other subjects herein assigned to the councils of the provinces as the council of any province may by law declare to be within the competency of the Union Parliament in respect of such province.

A.D. 1877.

Exclusive Powers of Provincial Councils.

Subject of exclusive provincial legislation.

47. In each province the council may exclusively make laws in relation to matters coming within the classes of subjects next herein-after enumerated, and not included among the subjects herein-before assigned to the Union Parliament; that is to say,

1. The qualification of electors and members of the provincial council.
   Direct taxation within the province in order to the raising of a revenue for provincial purposes.
   The borrowing of money on the sole credit of the province.
2. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
3. The management and sale of the public lands belonging to the province, and of the timber and wood thereon.
4. Education.
5. The establishment, maintenance, and management of public and reformatory prisons in and for the province.
6. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province other than marine hospitals.
7. Municipal institutions in the province.
   Licenses for trading and other purposes in order to the raising of a revenue for provincial, local, or municipal purposes.
8. Local works and undertakings other than such as are of the following classes:
   a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province:
   b. Lines of steamships between the province and any British or foreign country:
   c. Such works as, although wholly situate within the province, are before or after their execution declared by the Union Parliament to be for the general advantage of the Union or for the advantage of two or more of the provinces.
9. The incorporation of companies with provincial objects.
10. The solemnization of marriage in the province.
11. Property and civil rights in the province.
12. The administration of justice in the province, including the constitution, maintenance, and organisation of provincial

courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

13. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

14. The registration of titles to land.

15. Generally all matters of a merely local or private nature in the province.

Concurrent powers of legislation respecting immigration.

48. In each province the council may make laws in relation to immigration into the province; and it is hereby declared that the Union Parliament may from time to time make laws in relation to immigration into all or any of the provinces; and any law of a provincial council relative to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Union Parliament.

Appropriation, &c. of provincial revenue.

49. It shall not be lawful for the council of any province to adopt or pass any vote, resolution, address, or law for the appropriation of any part of the provincial revenue, or of any tax or impost, to any purpose that has not first been recommended to the council by the chief executive officer.

Distribution of powers may be varied.

50. The distribution of legislative powers between the Union Parliament and the councils of the provinces provided in the three last preceding sections of this Act may be varied by any Order in Council issued in pursuance of section three of this Act, and nothing in this Act shall be deemed to affect or limit in any way the power of the Queen, with the advice and consent of the Lords Spiritual and Temporal, and the Commons, of the United Kingdom of Great Britain and Ireland, in Parliament assembled, to make any law relating to the Union.

Allowance or disallowance of provincial laws.

51. Every law made by a provincial council shall be forthwith transmitted to the Governor General, who shall proceed with regard to such law in the same manner as is herein-before provided with respect to Bills passed by the Union Parliament.

VII.—Revenues; Debts; Assets; Taxation.

Clause A. Creation of Consolidated Revenue Fund.

All duties and revenues lawfully raised within the Union, except such portions thereof as are reserved to the respective councils of the provinces, or are raised by them in accordance with the special powers conferred on them, shall form one Consolidated Revenue Fund, to be appropriated for the public service

A.D. 1877.

of the Union in the manner and subject to the charges in this Act provided.

Clause B. Expenses of collection, &c.

The Consolidated Revenue Fund of the Union shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor General in Council until the Union Parliament otherwise provides.

Clause C. Interest of provincial public debts.

The annual interest of the public debts of each colony or state joining the Union shall, so far as they are in this Act declared to be a charge upon the Union, form the second charge on the Consolidated Revenue Fund of the Union.

Clause D. Salary of Governor General.

Unless altered by Act of the Union Parliament, the salary of the Governor General shall be ten thousand pounds per annum sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of the Union, and the same shall form the third charge thereon.

Clause E. Appropriation of revenue.

Subject to the several payments by this Act charged on the Consolidated Revenue Fund of the Union, the same shall be appropriated by the Union Parliament for the public service.

After due provision has been made for the public service of the Union, any surplus of the consolidated revenue of the Union which may in any year be so appropriated by the Union Parliament, shall be divided among the provinces in such proportions as the Queen may direct, or the Union Parliament may provide.

Clause F. The Union may become liable to provincial debts.

The Union shall be liable for so much of the public debt of each province existing at the Union as the Queen may direct, and the said provincial debts may, by Act of the Union Parliament, be consolidated into one stock.

Clause G. Provincial public property.

The Union may assume any lands or public property required for fortifications or for the defence of the country.

Clause H. Form of payments.

All payments to be made under this Act, or in discharge of liabilities created under any law of the colonies, states, or province respectively, and assumed by the Union, shall, until the Union Parliament otherwise enacts, be made in such form and manner as may from time to time be ordered by the Governor General in Council.

Clause I. Articles duty free within Union.

All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces.

A.D. 1877.

Clause K. Provincial Consolidated Revenue Fund.

All duties and revenues raised or received by the respective governments or councils of the provinces, in accordance with the special powers conferred upon them by this Act, shall in each province form one Consolidated Revenue Fund to be appropriated for the public service of the province.

VII.—Miscellaneous Provisions.

Oath of allegiance, &c.

52. Every member of the Legislative Council or House of Assembly of the Union, and every member of a council of any province, shall, before taking his seat therein, take and subscribe before the Governor General or some person authorised by him, the oath of allegiance contained in the Schedule to this Act.

Continuance of existing laws, courts, officers, &c.

53. Except as otherwise provided by this Act, or by any Order in Council issued under section three of this Act, all laws in force in the colonies and states respectively at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in the provinces situate within what at the said Union are the boundaries of those colonies and states respectively, as if the Union had not been made; subject nevertheless to be repealed, abolished, or altered by the Union Parliament, or by the council of the respective province, according to the authority of the Parliament or of that council under this Act.

General Court of Appeal, &c.

54. The Union Parliament may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance, and organisation of a Supreme Court of Judicature and of a General Court of Appeal for the Union and for the establishment of any additional courts for the better administration of the laws of the Union: Provided always, that no Act of the said Union Parliament shall extend or be construed to extend to take away or abridge the undoubted right and authority of Her Majesty, her heirs and successors, upon the humble petition of any person or persons aggrieved by any judgment, decree, order, or sentence of the said General Court of Appeal, to admit his, her, or their appeal to Her Majesty in Council from any rule, judgment, decree, order, or sentence upon such terms and securities, limitations, restrictions, and regulations as Her Majesty in Council, her heirs and successors, shall think fit.

Transfer of officers to the Union.

55. Until the Union Parliament otherwise provides, all officers of the several provinces having duties to discharge in relation to

A.D. 1877.

matters other than those coming within the classes of subjects by this Act assigned exclusively to the councils of the provinces shall be officers of the Union, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

Appointment of new officers.

56. Until the Union Parliament otherwise provides, the Governor General in Council may from time to time appoint such officers as the Governor General in Council deems necessary or proper for the effectual administration of the affairs of the Union in accordance with this Act.

Treaty obligations.

57. The Parliament and Government of the Union shall have all powers necessary or proper for performing the obligations of the Union or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

Laws respecting natives to be reserved.

58. All laws relating to the natives or to native affairs shall be reserved by the Governor General for the signification of Her Majesty's pleasure thereon, unless owing to some urgent emergency it is necessary for any such law to have immediate operation. But in such case the law shall be transmitted for Her Majesty's pleasure thereon at the earliest possible opportunity.

Amendment of Act, or Order made thereunder.

59. This Act and any Order in Council made hereunder may be amended by Act of the Union Parliament, but any such Act shall be reserved for the signification of Her Majesty's pleasure thereon, and shall not have effect until Her Majesty's pleasure in that behalf has been duly signified.

Power to admit new members into the Union.

60. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, on addresses from the Houses of the Union Parliament, and from the Legislature of any colony, state, or province not at the date of such addresses included in the Union, to admit that colony, state, or province into the Union, and on address from the Houses of the Union Parliament to admit any territory, not at the date of such addresses included in any colony, state, or province, into the Union, on such terms and conditions expressed in the addresses as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been contained in this Act.

Power to Her Majesty to authorise annexation

61. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to authorise the Governor for the time being of the Cape of Good Hope or of Natal

by proclamation, to declare that the whole or any portion or portions of any territories in South Africa forming part of Her Majesty's possessions, but not already included in either of the last-mentioned colonies, shall be annexed to and form part of such colonies or either of them, and the said territories or portions shall be annexed accordingly; provided always, that no such proclamation shall be issued until the Legislature of the colony to which such territories are to be annexed shall have passed a law providing that the said territories shall become part of the colony.

A.D. 1877.

to Cape or Natal of certain territories.

62. In case of the admission into the Union of any colony, state, or province not originally included in the Union, it shall be entitled to a representation in the Legislative Council and in the House of Assembly proportioned to the representation granted under this Act to the other provinces of the Union, and calculated in the same manner.

Representation of new members of Union.

63. In this Act—

The words "as the Queen may direct" mean as Her Majesty may direct by any Order in Council issued in pursuance of section three of this Act, but not otherwise.

Interpretation.

SCHEDULE.

Oath of Allegiance.

I, *A.B.*, do swear, That I will be faithful and bear true allegiance to Her Majesty Queen Victoria.

Note.—*The name of the Sovereign of the United Kingdom of Great Britain or Ireland for the time being is to be substituted from time to time with proper terms of reference thereto.*

A

BILL

INTITULED

An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union; and for purposes connected therewith.

(*Brought from the Lords* 4 *June* 1877.)

Ordered, by The House of Commons, *to be Printed*, 12 *June* 1877.

[Bill 195.]

Under 3 *oz.*

South Africa Bill. [H.L.]

[AS AMENDED IN COMMITTEE.]

ARRANGEMENT OF CLAUSES.

I.—Preliminary.

Clause.

1. Short title.
2. Application of provisions referring to the Queen.

II.—Union.

3. Declaration of union and provision for its completion.
4. Construction of subsequent provisions of Act.
5. Provinces.

III.—Executive Power.

6. Declaration of executive power in the Queen.
7. Application of provisions referring to Governor General.
8. Great Seal.
9. Constitution of Privy Council of the Union.
10. All powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.
11. Application of provisions referring to Governor General in Council.
12. Power to Her Majesty to authorise Governor General to appoint deputies.
13. Command of armed forces to be vested in the Queen.
14. Seat of Government.

IV.—Legislative Power.

15. Constitution of Parliament.
16. Privileges, &c. of Houses.
17. First session of the Parliament.

The Legislative Council.

18. Number and constitution of Legislative Council.

The House of Assembly.

Clause.
19. Constitution of House of Assembly.
20. Summoning of House of Assembly.
21. Decennial re-adjustment of representation.
22. Increase of number of House of Assembly.

Money Votes, Royal Assent.

23. Appropriation and Tax Bills.
24. Recommendation of money votes.
25. Royal Assent to Bills, &c.
26. Disallowance by Order in Council of Act assented to by Governor General.
27. Signification of Queen's pleasure on Bill reserved.

V.—Provincial Government.

28. Appointment of Presidents of provinces.
29. Salaries of Presidents.
30. Oaths, &c. of Presidents.
31. Application of provisions referring to Presidents.

Provincial Councils.

32. Council for each province.

VI.—Distribution of Legislative Powers.

Powers of the Union Parliament.

33. Legislative authority of Parliament.

Exclusive Powers of Provincial Councils.

34. Subject of exclusive provincial legislation.
35. Concurrent powers of legislation respecting immigration.
36. Appropriation, &c. of provincial revenue.
37. Distribution of powers may be varied.
38. Allowance or disallowance of provincial laws.

VII.—Revenues; Debts; Assets; Taxation.

39. Clause A.—Creation of Consolidated Revenue Fund.
40. Clause B.—Expenses of collection, &c.

Clause.
41. Clause C.—Interest of provincial public debts.
42. Clause D.—Salary of Governor General.
43. Clause E.—Appropriation of revenue.
44. Clause F.—The Union may become liable to provincial debts.
45. Clause G.—Provincial public property.
46. Clause H.—Form of payments.
47. Clause I.—Articles duty free within Union.
48. Clause K.—Provincial Consolidated Revenue Fund.

VIII.—Miscellaneous Provisions.

49. Oath of allegiance, &c.
50. Continuance of existing laws, courts, officers, &c.
51. General Court of Appeal, &c.
52. Transfer of officers to the Union.
53. Appointment of new officers.
54. Treaty obligations.
55. Laws respecting natives to be reserved.
56. Amendment of Act, or Order made thereunder.
57. Power to admit new members into the Union.
58. Power to Her Majesty to authorise annexation to Cape or Natal of certain territories.
59. Representation of new members of Union.
60. No Order in Council made under this Act regarding the establishment of the Union to be operative unless published on or before August 1, 1882.
61. Interpretation.

Schedule.

A

B I L L

[AS AMENDED IN COMMITTEE]

INTITULED

An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union; and for purposes connected therewith. A.D. 1877.

WHEREAS proposals have been made for uniting under one Government under the Crown of the United Kingdom of Great Britain and Ireland those colonies and states of South Africa which may voluntarily elect to enter into such Union:

And whereas such Union would conduce to the welfare of the said colonies and states and promote the interests of the British Empire, and it is expedient to make provision for any two or more of the said colonies or states to unite at such time as may be found convenient:

And whereas it is expedient to declare and define the general principles on which the constitution of the legislative authority and of the Executive Government in the Union may be established, and to enable the details of the said constitution and of the administrative establishments thereunder to be provided for after the wishes and opinions of the said colonies and states with respect to such details have been duly represented to Her Majesty through their respective Legislatures:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—Preliminary.

1. This Act may be cited as The South Africa Act, 1877. Short title.

2. The provisions of this Act referring to Her Majesty the Queen extend also to her heirs and successors. Application of provisions referring to the Queen.

A.D. 1877.

II.—Union.

Declaration of union and provision for its completion.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, to declare by Order in Council that, on and after a day therein appointed, any two or more of the colonies or states of South Africa whose respective Legislatures may so agree shall be joined or confederated together in Union under one general Government and Legislature, with such name and designation as to Her Majesty may seem fit; and on and after that day the said general Government and Legislature of the Union shall have full power and effect within the said colonies, or colonies and states which shall have so agreed.

It shall be lawful for the Queen, by and with the advice of Her Majesty's Privy Council, by any subsequent Order in Council issued before the first assembling of the Union Parliament, to alter or amend the said Order in Council, or to provide for any matters or things as to which Her Majesty is authorised by this Act to make provision, and which are not provided for in the said Order in Council; but no such Order in Council shall be issued under the provisions of this section after the first assembling of the Union Parliament.

In any such Order in Council as aforesaid the Queen may make provision for all or any of the matters as to which she is by this Act empowered to give directions, as well as for any other matters necessary to the due establishment of the Union, and before making such provision shall have regard to any representations that may be made to Her Majesty by or by the authority of the Legislature of any state or colony concerned, or by any committee or other body duly appointed by any two or more of the said Legislatures jointly to consider the subjects mentioned in this Act.

Construction of subsequent provisions of Act.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect; and in the same provisions, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South African colonies or colonies and states provided for by this Act.

Provinces.

5. The Union shall be divided into such provinces, with such names and boundaries, as the Queen may direct.

III.—Executive Power.

Declaration of executive

6. The Executive Government and Authority of and over the Union is hereby declared to be vested in the Queen, and may be

exercised on Her Majesty's behalf by the Governor General or the officer appointed to administer the Government by or by authority of Her Majesty's Royal Letters Patent.

power in the Queen.

7. The provisions of this Act referring to the Governor General extend and apply to the Governor General for the time being of the Union, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Union on behalf and in the name of the Queen, by whatever title he is designated.

Application of provisions referring to Governor General.

8. There shall be a Great Seal for the Union, of such device as Her Majesty may approve.

Great Seal.

9. There shall be a council to aid and advise in the government of the Union, to be styled the Privy Council of the Union; and the persons who are to be members of that council shall be from time to time chosen and summoned by the Governor General and sworn in as privy councillors, and may be from time to time removed by the Governor General.

Constitution of Privy Council of the Union.

10. All powers, authorities, and functions which are at the Union lawfully vested in or exerciseable by the respective Governor, Lieutenant-Governor, Administrator, or President of a colony or state, with the advice, or with the advice and consent, of the Executive Council or other administrative body thereof, or in conjunction with such council or body, or with any number of members thereof, or by the said Governor, Lieutenant-Governor, Administrator, or President individually, or by Her Majesty's High Commissioner for South Africa, shall (as far as the same continue in existence and capable of being exercised after the admission of such colony or state into the Union), in relation to the Government of the Union, be vested in and exerciseable by the Governor General, with the advice, or with the advice and consent of, or in conjunction with the Privy Council of the Union, or any members thereof, or by the Governor General individually, as the case requires, subject nevertheless to be abolished or altered by the Union Parliament.

All powers under Acts to be exercised by Governor General with advice of Privy Council, or alone.

11. The provisions of this Act referring to "the Governor General in Council" shall be construed as referring to the Governor General acting by and with the advice of the Privy Council of the Union, and where "the Governor General" alone is mentioned the provision shall be construed as referring to the Governor General acting on his own discretion and without such advice.

Application of provisions referring to Governor General in Council.

12. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorise the Governor General from time to time to appoint

Power to Her Majesty

A.D. 1877.

to authorise Governor General to appoint deputies.

any person or any persons jointly or severally to be his deputy or deputies within any part or parts of the Union, and in that capacity to exercise during the pleasure of the Governor General such of the powers, authorities, and functions of the Governor General as he may deem it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen in conformity with the constitutional laws of the Union; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General himself of any power, authority, or function.

Command of armed forces to be vested in the Queen.

13. The command-in-chief of the land and naval militia, and of all naval and military forces, of and in the Union, is hereby declared to be vested in the Queen.

Seat of Government.

14. The seat of Government of the Union shall be such place as the Queen may direct.

IV.—Legislative Power.

Constitution of Parliament.

15. There shall be one general Legislature for the Union (in this Act called "the Union Parliament"), consisting of the Queen, an Upper House herein-after styled the Legislative Council, and a House of Representatives herein-after styled the House of Assembly; provided that either of the said Houses may receive such other designation as the Queen may direct.

Privileges, &c. of Houses.

16. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and by the House of Assembly and by the members thereof respectively shall be such as are from time to time defined by Act of the Union Parliament, but so that the same shall never exceed those at the time of the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

First session of the Parliament.

17. The Union Parliament shall be called together not later than twelve months after the Union.

The Legislative Council.

Number and constitution of Legislative Council.

18. The Legislative Council shall, subject to the provisions of this Act, consist of such number of members, representing such divisions of the Union, and shall be so constituted, as the Queen may direct.

A.D. 1877.

The House of Assembly.

Constitution of House of Assembly.

19. The House of Assembly shall, subject to the provisions of this Act, consist of elected members, representing in fair proportions the various provinces of the Union, and until the Union Parliament otherwise provides, the provinces shall, for the purposes of the election of members to serve in the House of Assembly, be divided into such electoral districts returning such number of members respectively, and the electors and members shall have such qualifications, and the elections shall be conducted according to such rules and regulations, as the Queen may direct: Provided always, that in the apportionment of members, and in the determination of the qualifications of electors and members, provision shall be made for the due representation of the natives in the Union Parliament and in the Provincial Councils, in such manner as shall be deemed by Her Majesty to be without danger to the stability of the Government.

Summoning of House of Assembly.

20. The Governor General shall from time to time, in the Queen's name, by instrument under the Great Seal of the Union, summon and call together the House of Assembly.

Decennial re-adjustment of representation.

21. A census of the Union shall be taken in the year one thousand eight hundred and ninety-one, and at the end of each subsequent period of ten years, and on the completion of every such decennial census, the representation of the provinces may be re-adjusted by such authority, in such manner, and from such times as the Union Parliament from time to time provides, subject and according to such rules as the Queen may direct.

Such re-adjustment shall not take effect until the termination of the then existing Parliament.

Increase of number of House of Assembly.

22. The number of members of the House of Assembly may be from time to time increased by the Union Parliament, provided that the proportionate representation for the time being in force of the provinces is not thereby disturbed.

Money Votes, Royal Assent.

Appropriation and Tax Bills.

23. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Assembly.

Recommendation of money votes.

24. It shall not be lawful for the House of Assembly to adopt or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message

A.D. 1877.

from the Governor General in the session in which such vote, resolution, address, or Bill is proposed.

Royal Assent to Bills, &c.

25. Where a Bill passed by the Houses of the Union Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds such assent, or that he reserves the Bill for the signification of the Queen's pleasure, or that he will be prepared to assent thereto, subject to certain amendments to be specified by him.

Disallowance by Order in Council of Act assented to by Governor General.

26. Where the Governor General assents to a Bill in the Queen's name, he shall, by the first convenient opportunity, send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council, within two years after receipt thereof by the Secretary of State, thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor General, by speech or message to each of the Houses of the Union Parliament or by proclamation, shall annul the Act from and after the day of such signification.

Signification of Queen's pleasure on Bill reserved

27. A Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by speech or message to each of the Houses of the Union Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of the Union.

V.—Provincial Government.

Appointment of Presidents of provinces.

28. Each province shall be presided over by a Chief Executive Officer bearing such title and appointed and removable in such manner as the Queen may direct.

Salaries of Presidents.

29. Until altered by Act of the Union Parliament, the salaries of such officers shall be such as the Queen may direct.

Oaths, &c. of Presidents.

30. Every such officer shall, before assuming the duties of his office, make and subscribe before the Governor General, or some

person authorised by him, oaths of allegiance and office similar to those taken by the Governor General. A.D. 1877.

Application of provisions referring to Presidents.

31. The provisions of this Act referring to such officer shall extend and apply to the Chief Executive Officer or Administrator for the time being carrying on the Government of any province, by whatever title he is designated.

Provincial Councils.

Council for each province.

32. There shall be a council or Parliament for each province, consisting of the Chief Executive Officer and a House or two Houses of Legislature, and of such number of councillors or councillors and members of Assembly elected in such manner and for such term as the Queen may direct.

VI.—Distribution of Legislative Powers.

Powers of the Union Parliament.

Legislative authority of Parliament.

33. It shall be lawful for the Queen, by and with the advice and consent of the Legislative Council and House of Assembly, to make laws for the peace, order, and good government of the Union, in relation to all matters not coming within the classes of subjects by this Act assigned to the councils of the provinces; and for greater certainty it is hereby declared that (notwithstanding anything in this Act) the legislative authority of the Union Parliament extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say,

1. The qualification of electors and members of the Legislative Council and House of Assembly, and other questions relating to the constitution, privileges, and proceedings of either of the said bodies, but always subject to the provisions of this Act relating to the representation of natives.
2. The public debt and property.
3. The regulation of trade and commerce.
4. The raising of money by any mode or system of taxation.
5. The borrowing of money on the public credit of the Union.
6. Postal service and telegraphs.
7. The census and statistics.
8. Militia, military and naval service, and defence, saving all matters and things relating to the troops, ships, property, and prerogatives of the Crown not heretofore placed under the jurisdiction of the Colonial Governments.
9. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of the Union.

A.D. 1877.

10. Beacons, buoys, lighthouses.
11. Navigation and shipping.
12. Quarantine and the establishment and maintenance of marine hospitals.
13. Fisheries.
14. Bridges or ferries between a province and a foreign state or between two provinces.
15. Currency and coinage.
16. Banking, incorporation of banks, and the issue of paper money.
17. Savings banks.
18. Weights and measures.
19. Bills of exchange and promissory notes.
20. Interest.
21. Legal tender.
22. Bankruptcy and insolvency.
23. Patents of invention and discovery.
24. Copyrights.
25. Affairs of native tribes or peoples who are not included under the laws applicable to the general community.
26. Naturalization and aliens.
27. Marriage and divorce.
28. The criminal law.
29. The establishment, maintenance, and management of gaols, hospitals, asylums, and other public institutions for the use of the Union generally.
30. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the councils of the provinces.
31. Such other subjects herein assigned to the councils of the provinces as the council of any province may by law declare to be within the competency of the Union Parliament in respect of such province.

Exclusive Powers of Provincial Councils.

Subject of exclusive provincial legislation.

34. In each province the council may exclusively make laws in relation to matters coming within the classes of subjects next herein-after enumerated, and not included among the subjects herein-before assigned to the Union Parliament; that is to say,

1. The qualification of electors and members of the provincial council, but always subject to the provisions of this Act relating to the representation of natives.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.

A.D. 1877.

3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province, and of the timber and wood thereon.
6. Education.
7. The establishment, maintenance, and management of public and reformatory prisons in and for the province.
8. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province other than marine hospitals.
9. Municipal institutions in the province.
10. Licenses for trading and other purposes in order to the raising of a revenue for provincial, local, or municipal purposes.
11. Local works and undertakings other than such as are of the following classes:
    a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province:
    b. Lines of steamships between the province and any British or foreign country:
    c. Such works as, although wholly situate within the province, are before or after their execution declared by the Union Parliament to be for the general advantage of the Union or for the advantage of two or more of the provinces.
12. The incorporation of companies with provincial objects.
13. The solemnization of marriage in the province.
14. Property and civil rights in the province.
15. The administration of justice in the province, including the constitution, maintenance, and organisation of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.
16. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
17. The registration of titles to land.
18. Generally all matters of a merely local or private nature in the province.

A.D. 1877.

Concurrent powers of legislation respecting immigration.

35. In each province the council may make laws in relation to immigration into the province; and it is hereby declared that the Union Parliament may from time to time make laws in relation to immigration into all or any of the provinces; and any law of a provincial council relative to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Union Parliament.

Appropriation, &c. of provincial revenue.

36. It shall not be lawful for the council of any province to adopt or pass any vote, resolution, address, or law for the appropriation of any part of the provincial revenue, or of any tax or impost, to any purpose that has not first been recommended to the council by the chief executive officer.

Distribution of powers may be varied.

37. The distribution of legislative powers between the Union Parliament and the councils of the provinces provided in the three last preceding sections of this Act may be varied by any Order in Council issued in pursuance of section three of this Act, and nothing in this Act shall be deemed to affect or limit in any way the power of the Queen, with the advice and consent of the Lords Spiritual and Temporal, and the Commons, of the United Kingdom of Great Britain and Ireland, in Parliament assembled, to make any law relating to the Union.

Allowance or disallowance of provincial laws.

38. Every law made by a provincial council shall be forthwith transmitted to the Governor General, who shall proceed with regard to such law in the same manner as is herein-before provided with respect to Bills passed by the Union Parliament.

VII.—Revenues; Debts; Assets; Taxation.

Clause A. Creation of Consolidated Revenue Fund.

39. All duties and revenues lawfully raised within the Union, except such portions thereof as are reserved to the respective councils of the provinces, or are raised by them in accordance with the special powers conferred on them, shall form one Consolidated Revenue Fund, to be appropriated for the public service of the Union in the manner and subject to the charges in this Act provided.

Clause B. Expenses of collection, &c.

40. The Consolidated Revenue Fund of the Union shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor General in Council until the Union Parliament otherwise provides.

A.D. 1877.

Clause C. Interest of provincial public debts.

41. The annual interest of the public debts of each colony or state joining the Union shall, so far as they are in this Act declared to be a charge upon the Union, form the second charge on the Consolidated Revenue Fund of the Union.

Clause D. Salary of Governor General.

42. Unless altered by Act of the Union Parliament, the salary of the Governor General shall be not less than eight nor more than ten thousand pounds per annum sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of the Union, and the same shall form the third charge thereon.

Clause E. Appropriation of revenue.

43. Subject to the several payments by this Act charged on the Consolidated Revenue Fund of the Union, the same shall be appropriated by the Union Parliament for the public service.

After due provision has been made for the public service of the Union, any surplus of the consolidated revenue of the Union which may in any year be so appropriated by the Union Parliament, shall be divided among the provinces in such proportions as the Queen may direct, or the Union Parliament may provide.

Clause F. The Union may become liable to provincial debts.

44. The Union shall be liable for so much of the public debt of each province existing at the Union as the Queen may direct, and the said provincial debts may, by Act of the Union Parliament, be consolidated into one stock.

Clause G. Provincial public property.

45. The Union may assume any lands or public property required for fortifications or for the defence of the country.

Clause H. Form of payments.

46. All payments to be made under this Act, or in discharge of liabilities created under any law of the colonies, states, or province respectively, and assumed by the Union, shall, until the Union Parliament otherwise enacts, be made in such form and manner as may from time to time be ordered by the Governor General in Council.

Clause I. Articles duty free within Union.

47. All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces.

Clause K. Provincial Consolidated Revenue Fund.

48. All duties and revenues raised or received by the respective governments or councils of the provinces, in accordance with the special powers conferred upon them by this Act, shall in each province form one Consolidated Revenue Fund to be appropriated for the public service of the province.

A.D. 1877.

VIII.—Miscellaneous Provisions.

Oath of allegiance, &c.

49. Every member of the Legislative Council or House of Assembly of the Union, and every member of a council of any province, shall, before taking his seat therein, take and subscribe before the Governor General or some person authorised by him, the oath of allegiance contained in the Schedule to this Act.

Continuance of existing laws, courts, officers, &c.

50. Except as otherwise provided by this Act, or by any Order in Council issued under section three of this Act, all laws in force in the colonies and states respectively at the Union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers, and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in the provinces situate within what at the said Union are the boundaries of those colonies and states respectively, as if the Union had not been made; subject nevertheless to be repealed, abolished, or altered by the Union Parliament, or by the council of the respective province, according to the authority of the Parliament or of that council under this Act.

General Court of Appeal, &c.

51. The Union Parliament may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance, and organisation of a Supreme Court of Judicature and of a General Court of Appeal for the Union and for the establishment of any additional courts for the better administration of the laws of the Union: Provided always, that no Act of the said Union Parliament shall extend or be construed to extend to take away or abridge the undoubted right and authority of Her Majesty, her heirs and successors, upon the humble petition of any person or persons aggrieved by any judgment, decree, order, or sentence of the said General Court of Appeal, to admit his, her, or their appeal to Her Majesty in Council from any rule, judgment, decree, order, or sentence upon such terms and securities, limitations, restrictions, and regulations as Her Majesty in Council, her heirs and successors, shall think fit.

Transfer of officers to the Union.

52. Until the Union Parliament otherwise provides, all officers of the several provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the councils of the provinces shall be officers of the Union, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

A.D. 1877.

Appointment of new officers.

53. Until the Union Parliament otherwise provides, the Governor General in Council may from time to time appoint such officers as the Governor General in Council deems necessary or proper for the effectual administration of the affairs of the Union in accordance with this Act.

Treaty obligations.

54. The Parliament and Government of the Union shall have all powers necessary or proper for performing the obligations of the Union or of any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

Laws respecting natives to be reserved.

55. All laws relating to the natives or to native affairs shall be reserved by the Governor General for the signification of Her Majesty's pleasure thereon, unless owing to some urgent emergency it is necessary for any such law to have immediate operation. But in such case the law shall be transmitted for Her Majesty's pleasure thereon at the earliest possible opportunity.

Amendment of Act, or Order made thereunder.

56. No Act of the Union Parliament shall be deemed to be void or inoperative on the ground that it is repugnant to this Act or to any Order in Council made hereunder, but any such Act containing provisions differing from the provisions of this Act shall be reserved for the signification of Her Majesty's pleasure thereon, and shall not have effect until Her Majesty's pleasure in that behalf has been duly signified.

Power to admit new members into the Union.

57. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, on addresses from the Houses of the Union Parliament, and from the Legislature of any colony, state, or province not at the date of such addresses included in the Union, to admit that colony, state, or province into the Union, and on address from the Houses of the Union Parliament to admit any territory, not at the date of such addresses included in any colony, state, or province, into the Union, on such terms and conditions expressed in the addresses as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been contained in this Act.

Power to Her Majesty to authorise annexation to Cape or Natal of certain territories.

58. It shall be lawful for the Queen, by and with the advice of Her Majesty's most honourable Privy Council, to authorise the Governor for the time being of the Cape of Good Hope or of Natal, by proclamation, to declare that the whole or any portion or portions of any territories in South Africa forming part of Her Majesty's possessions, but not already included in either of the

A.D. 1877.

last-mentioned colonies, shall be annexed to and form part of such colonies or either of them, and the said territories or portions shall be annexed accordingly; provided always, that no such proclamation shall be issued until the Legislature of the colony to which such territories are to be annexed shall have passed a law providing that the said territories shall become part of the colony.

Representation of new members of Union.

59. In case of the admission into the Union of any colony, state, or province not originally included in the Union, it shall be entitled to a representation in the Legislative Council and in the House of Assembly proportioned to the representation granted under this Act to the other provinces of the Union, and calculated in the same manner.

No Order in Council made under this Act regarding the establishment of the Union to be operative unless published on or before Aug. 1, 1882.

60. The powers hereby conferred upon Her Majesty with reference to the first establishment of the Union shall not be exercised after the first day of August one thousand eight hundred and eighty-two, and no such Order in Council made in pursuance of this Act shall have any force or effect unless duly published in the "London Gazette" on or before that date.

Interpretation.

61. In this Act—

The words "as the Queen may direct" mean as Her Majesty may direct by any Order in Council issued in pursuance of section three of this Act, but not otherwise.

SCHEDULE.

Oath of Allegiance.

I, *A.B.*, do swear, That I will be faithful and bear true allegiance to Her Majesty Queen Victoria.

Note.—*The name of the Sovereign of the United Kingdom of Great Britain or Ireland for the time being is to be substituted from time to time with proper terms of reference thereto.*

South Africa. [H.L.]

A

BILL

[AS AMENDED IN COMMITTEE]

INTITULED

An Act for the Union under one Government of such of the South African Colonies and States as may agree thereto, and for the Government of such Union; and for purposes connected therewith.

(*Brought from the Lords* 4 *June* 1877.)

Ordered, by The House of Commons, *to be Printed,*
1 *August* 1877.

[Bill 271.]

Under 3 *oz.*

Summary Jurisdiction Amendment Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title of Act.
2. Application of Act.
3. Commencement of Act.

PART I.

Court of Summary Jurisdiction.

4. Mitigation of punishment by court.
5. Scale of imprisonment for nonpayment of money.
6. Payment by instalments of or security taken for fines and other sums.
7. Costs to be included in small fines.
8. Estreatment of recognizances.
9. Summary conviction as respects children.
10. Summary conviction with consent as respects young persons.
11. Summary conviction with consent as respects adult.
12. Summary conviction on plea of guilty of young person or adult.
13. Appeal to a jury in case of offences triable summarily.
14. Appeal from summary conviction to general or quarter sessions.
15. Constitution of court when trying offences.
16. Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

Supplemental Provisions.

17. Regulations as to securities taken in pursuance of Act.
18. Payment to local treasurer of certain fines and estreats.
19. Power of court of summary jurisdiction to remand.
20. Regulations as to indictable offences dealt with summarily.
21. Costs of prosecution of indictable offences dealt with summarily.
22. Power of the Lord Chancellor to make rules.

[Bill 137.]

Clause.

PART II.

Amendment of Procedure.

23. Appeal.
24. Summary orders.
25. Recovery of civil debts in court of summary jurisdiction.
26. Pleadings and forfeitures.
27. Case from quarter sessions without certiorari.
28. Proof by affidavit of service of process.
29. Procedure on the execution of distress warrants.
30. Return of property by order of Court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

31. Special definitions for purposes of the Act.

General Definitions.

32. General definitions applicable to Acts in general.

Application of Acts.

33. Summary Jurisdiction Acts, how applied to other Acts.

Savings, and Construction.

34. Saving for Army and Militia Acts.
35. Exceptions from Act.
36. Construction of Act.

Repeal.

37. Repeal of Acts.

SCHEDULES.

A

B I L L

TO

Amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as The Summary Jurisdiction Act, 1877.

Application of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the *first day of January one thousand eight hundred and seventy-eight* (which day is in this Act referred to as the commencement of this Act).

PART I.

Court of Summary Jurisdiction.

Mitigation of punishment by court.

4. Where a court of summary jurisdiction has authority under any Act of Parliament to adjudge any person to be imprisoned for any cause, or to pay a fine, the court may, notwithstanding any enactment to the contrary, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof.

Scale of imprisonment for non-payment of money.

5. The period of imprisonment to be imposed by a court of summary jurisdiction in respect of the non-payment of any sum or sums of money adjudged to be paid by a conviction or order of such court, and the amount of which is ascertained by such conviction or order, or in respect of the default of a distress to satisfy any such sum or sums, shall, notwithstanding any enactment to the contrary, be regulated by the following scale; that is to say,

A.D. 1877.

Where the sum or sums of money adjudged to be paid, and the amount of which is ascertained by the conviction or order	The period of imprisonment to be adjudged in respect of the non-payment of such sum or sums, or of the default of a distress to satisfy such sum or sums, shall not exceed
Does not or do not exceed *ten shillings* -	*Seven days.*
Exceeds or exceed *ten shillings* but does not or do not exceed *one pound* - -	*Fourteen days.*
Exceeds or exceed *one pound* but does not or do not exceed *five pounds* - -	*One month.*
Exceeds or exceed *five pounds* but does not or do not exceed *twenty pounds* -	*Two months.*
Exceeds or exceed *twenty pounds* -	*Three months.*

Payment by instalments of or security taken for fines and other sums.

6. A court of summary jurisdiction may by its conviction or order allow time for the payment of any sum adjudged to be paid, or direct payment to be made of any such sum by instalments.

The court may also at the time of making a conviction or order accept security from any person adjudged to pay any sum, with or without a surety or sureties, for the payment of such sum or any instalment thereof, and may enforce such security in manner provided by this Act.

Where any sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

The payment of any sum or of an instalment of any sum in pursuance of this section may be directed to be made at such time or times, and in such place or places, and to such person or persons, as may be specified in the conviction or order.

Costs to be included in small fines.

7. Where a fine imposed on any person on his conviction for any offence by a court of summary jurisdiction does not exceed *five shillings*, then, unless the court for special reasons thinks fit to order otherwise, such fine shall be deemed to include costs, and an order shall not be made for payment by the defendant to the informant of any costs; and the court may direct all fees payable or paid by the informant to be remitted or repaid to him, and order the fine or any part thereof to be paid to the informant in or towards the payment of his costs; and a warrant of distress shall not be issued in respect of any such fine, but the payment of such fine may be enforced by imprisonment.

Estreatment of recognizances.

8. A court of summary jurisdiction may enforce payment of any forfeited recognizance taken before a court of summary jurisdiction or taken before a constable, where any such forfeited recognizance is

conditioned for the appearance of any person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in or to a court or in a proceeding in a court of summary jurisdiction, in the same manner as if the money payable under such recognizance were a fine.

Where a recognizance] to keep the peace or to be of good behaviour has been entered into by any person as principal or surety before a court of summary jurisdiction, it shall be lawful for a court of summary jurisdiction, upon information laid before the court and proof of the conviction of the person bound as principal by such recognizance of any offence, which is in law a breach of the condition of the same, to order such recognizance to be forfeited, and to order the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

Summary conviction as respects children.

9. Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, and in the opinion of such court the child is of sufficient age and capacity to commit crime, the court, if it thinks it expedient so to do, and subject to such provision as is in this section mentioned with respect to the consent to be given by the parent or guardian of the child so charged, may, instead of committing the child for trial, deal summarily with the offence, and adjudge such child, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding *one month*, or if the child is a male, and the court thinks it inexpedient to inflict punishment by imprisonment, it may instead of imprisonment order such child to be privately whipped by a constable, in the presence of an inspector or other officer of police, with not more than six strokes of a birch rod; and in any such case the court, if upon the hearing of the charge it thinks it inexpedient to inflict any punishment, may, without proceeding to a conviction, dismiss the charge against the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

The parent or guardian of a child charged with any such offence as is in this section mentioned shall, if it be known to the court that he is present, be informed by the court of his right to have the child tried by a jury; and if such parent or guardian, on being so informed, withhold his consent from the offence being dealt with summarily, the court shall deal with the same as if it were an offence punishable on indictment; but if the parent or guardian is not known to the court to be present, or if he consent to the case being dealt with summarily, the court may, if it think it expedient so to do, deal with the same accordingly.

A.D. 1877.

For the purpose of informing the parent or guardian of his right under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, "or do you consent to the case being dealt with summarily?"— with an explanation, if the court think such explanation desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the child will stand committed if his case is tried by a jury.

Where the parent or guardian is not present in court, the court may, if it thinks it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian with a view so far as is practicable of securing his attendance in court.

The expenses of a prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, but not to a greater amount in any one case than *forty shillings*, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

A child shall not, on summary conviction for an offence under this Act or any other Act of Parliament, be imprisoned for any longer term than *one month*.

If upon the hearing of any charge against a child in respect of any offence punishable on summary conviction the court of summary jurisdiction thinks it inexpedient to inflict any punishment, it may, without proceeding to a conviction, dismiss the charge against the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

Summary conviction with consent as respects young persons.

10. Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule hereto, the court, if it thinks it expedient so to do, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may, instead of committing the young person for trial, deal summarily with the offence, and in its discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding *three pounds*, or to be imprisoned, with or without hard labour, for any term not exceeding *three months*; and if the young person is a male, and, in the opinion of the court, under the age of fourteen

Note.—Se
First Sche
dule.

25 & 26 Vict. c. 18.

years, the court, if it thinks it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be privately whipped by a constable, in the presence of an inspector or other officer of police, with not more than twelve strokes of a birch rod.

For the purpose of informing a young person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such young person to the following effect: "Do you desire to be tried "by a jury, or do you consent to the case being dealt with summarily?"—with an explanation, if the court think such explanation desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the young person will stand committed if his case is tried by a jury.

If upon the hearing of any charge against a young person in respect of any indictable offence specified in the First Schedule hereto, or in respect of any offence punishable on summary conviction, the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may, without proceeding to a conviction, dismiss the charge against the young person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

A young person shall not be tried summarily under this section where it appears to the court that the offence in respect of which it is called upon to exercise jurisdiction under this section is one which, owing to a previous conviction of the young person charged, is punishable by law with penal servitude.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

Note.—See Second Schedule.

Summary conviction, with consent as respects adult.

11. Where a person is charged before a court of summary jurisdiction with any indictable offence specified in the Second Schedule hereto, the court, if it thinks it expedient so to do, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may, instead of committing the person for trial, deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding *three months*.

A.D. 1877.

For the purpose of informing a person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address to such person a question to the following effect: "Do you desire to be tried by a jury, or "do you consent to the case being dealt with summarily?"—with an explanation, if the court think such explanation desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the person will stand committed if his case is tried by a jury.

A court of summary jurisdiction, if upon the hearing of any charge against a person in respect of an indictable offence specified in the said Second Schedule hereto it think it inexpedient to inflict any punishment, may, without proceeding to a conviction, dismiss the charge against such person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not apply to the case of a child or young person, and shall not apply to a case where it appears to the court that the offence in respect of which it is called upon to exercise jurisdiction under this section is one which, owing to a previous conviction of the person charged, is punishable by law with penal servitude.

Summary conviction on plea of guilty of young person or adult.

12. Where any person is charged before a court of summary jurisdiction with any indictable offence specified in the said First Schedule hereto, if the evidence on the conclusion of the case for the prosecution is, in the opinion of such court, sufficient to put the person charged on his trial for the offence with which he is charged, and the case appear to the court to be one which may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, in any such case as aforesaid the court shall reduce the charge into writing, and shall read it to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered upon the proceedings, and adjudge him, if a young person, to any punishment which might have been adjudged to him in pursuance of this Act if he had consented to be tried summarily in manner in this Act mentioned; and if not a

Note.—See First Schedule.

young person, to be imprisoned, with or without hard labour, for any term not exceeding *six months*.

The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he do not plead or answer, he will be committed for trial in the usual course.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not apply to a child.

A person shall not be tried summarily under this section where it appears to the court that the offence in respect of which it is called upon to exercise jurisdiction under this section is one which, owing to a previous conviction of the person charged, is punishable by law with penal servitude.

Appeal to a jury in case of offences triable summarily.

13. Any person when charged before a court of summary jurisdiction with any offence in respect of the commission of which he is liable on summary conviction to be imprisoned for a term exceeding *three months*, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him as follows, or to the like effect: "You are charged with an offence in respect "of the commission of which you are liable, if convicted by a "court of summary jurisdiction, to be imprisoned for a term "exceeding three months; do you desire to be tried by a jury, or do "you consent to the case being dealt with summarily?"—with an explanation, if the court think such explanation desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the person will stand committed if his case is tried by a jury.

A.D. 1877.

See 24 & 25 Vict. c. 100. s. 43.

Nothing in this section shall apply to the offence of assault or battery upon any male child whose age does not exceed fourteen years, or upon any female of such an aggravated nature that it cannot in the opinion of the court be sufficiently punished under the law relating to common assaults and batteries.

This section shall not apply to the case of a child.

Appeal from summary conviction to general or quarter sessions.

14. Where any person is sentenced to imprisonment by a court of summary jurisdiction as a punishment for his offence, and not in respect of the non-payment of a fine or other sum of money, for a period exceeding a month in pursuance of this Act, or of any Act of Parliament passed before or after the commencement of this Act, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, he may appeal to a court of general or quarter sessions against such sentence.

Constitution of court when trying offences.

15. A court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter under this or any other Act of Parliament, or enforcing any security or payment of any recognizance in pursuance of this Act, shall, save as in this section is otherwise provided, and notwithstanding any enactment to the contrary, be constituted either of two or more justices of the peace sitting at some court or other public place at which justices are for the time being accustomed to assemble for holding special or petty sessions, or of some magistrate or officer sitting alone or with others at some police or open court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where at the time appointed for the sitting of two or more justices at some court or other public place at which justices are for the time being accustomed to assemble for holding special or petty sessions one justice only is present, such justice may adjourn the hearing of any case to the next practicable court of summary jurisdiction sitting in session, in the same manner in all respects as a justice is authorised to adjourn the hearing of a case under the sixteenth section of the Summary Jurisdiction Act, 1848.

Provided, that this section shall not apply in the case—

(1.) Of any offence arising under the Act of the fifth year of the reign of King George the Fourth, chapter eighty-three, intituled "An Act for the punishment of idle "and disorderly persons, and rogues and vagabonds,

"in that part of Great Britain called England" (as amended by any subsequent Act); or

(2.) Of the offence of being found drunk in any highway or other public place, or in licensed premises.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

16. A court of summary jurisdiction, if it deems it expedient so to do, may at the time of making the conviction or order postpone the issue of a warrant for committing a person to prison for nonpayment of a sum of money, or for default of distress to satisfy any such sum, or the issue of a warrant of distress, until such time and on such conditions, if any, as to the court may seem just.

The wearing apparel and bedding of a person and his family, and, to the value of *five pounds*, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Where a person is adjudged by the conviction or order of a court of summary jurisdiction to pay a sum or sums of money, on default of payment of which a warrant of distress is authorised to be issued, if it is contended by or on behalf of such person that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, the court, if it is satisfied of the truth of such contention, instead of issuing such warrant of distress, may order the person liable to pay such money, on nonpayment of the sum of money, to be imprisoned for any period not exceeding the period for which he is liable to be imprisoned in default of sufficient distress to satisfy such money.

Where, on the return of a warrant of distress issued by a court of summary jurisdiction, it appears to the court that the goods and chattels of the defendant, although insufficient to satisfy the whole amount adjudged to be paid by the conviction or order, have reduced the amount so adjudged to such an extent that the unsatisfied balance, if it had constituted the original amount in respect of which the conviction or order was made, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke so much of the conviction or order as imposes the term of imprisonment, and shall command the defendant to be imprisoned for such less maximum term, instead of for the term originally mentioned in the conviction or order.

A.D. 1877.

Supplemental Provisions.

Regulations as to securities taken in pursuance of Act.

17. A person shall give security under this Act, whether as principal or surety, by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be prescribed by any rule made in pursuance of this Act and for the time being in force.

The payment of any sum by a principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction in manner in which that court is authorised to enforce payment of a fine of like amount.

The payment of any sum payable by a surety on behalf of his principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction as a civil debt due from him in the manner in which civil debts are directed to be enforced by such court under this Act and not otherwise.

Any sum paid by a surety on behalf of his principal in respect of a forfeited security under this Act, together with all costs, charges, and expenses incurred by such surety in respect of his security, shall be deemed a civil debt due to him from the principal, and may be enforced by a court of summary jurisdiction in manner in which civil debts are directed to be enforced by such court under this Act, and not otherwise.

Payment to local treasurer of certain fines and estreats.

18. Subject as in this section after mentioned, there shall be paid to the treasurer of the county, borough, or place for which a court of summary jurisdiction acts—

(1.) All fines adjudged to be paid by any conviction of such court and directed by any Act of Parliament to be paid into the Exchequer, or to Her Majesty, or to any person or persons for the use of Her Majesty; also

(2.) All sums paid in pursuance of the order of such court under any forfeited recognizance or any recognizance to keep the peace or be of good behaviour.

Nothing in this section shall affect the payment of any sums payable to the receiver of the metropolitan police district.

Power of court of summary jurisdiction to remand.

19. Where a court of summary jurisdiction has cognizance of any indictable offence with which it has or may have, under the circumstances in this Act mentioned, power to deal summarily, such court may, for the purpose of ascertaining whether the case is of such a nature as ought to be dealt with summarily, either before or during the hearing of the case, adjourn the case for any time not

exceeding eight clear days. And further, when a court of summary jurisdiction having cognizance of a charge of any such offence as in this section mentioned is not at the time of the charge being brought before it sitting in session, it may, if it thinks the case proper to be dealt with summarily in pursuance of this Act, adjourn the case till the next practicable court of summary jurisdiction sitting in session.

Where any case is adjourned in pursuance of this section, the court adjourning the same may commit the person charged with the offence to prison during the period of such adjournment, or may allow him to be at large on his entering into a recognizance with or without a surety or sureties conditioned for his appearance at the time and place to which the case is adjourned.

Regulations as to indictable offences dealt with summarily.

20. Where indictable offences are under the circumstances in this Act mentioned authorised to be dealt with summarily, the procedure shall, until the conclusion of the case for the prosecution, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment:

Provided as follows,—

(1.) Where, upon the hearing of a case, the court dismisses the charge against a person either because it deems the offence charged not to be proved or because it thinks it inexpedient to inflict any punishment, it shall, on request, make out and deliver to such person a certificate in such form as may from time to time be directed by rules under this Act, stating the fact of such dismissal, and such certificate shall be evidence of the charge against the person therein named having been dismissed; and

(2.) The conviction of a person for an offence or the dismissal of a charge against him by a court of summary jurisdiction shall in relation to the trial or punishment of such person for the same offence have the same effect, in the case of a conviction, as a conviction on indictment, and in the case of the dismissal of the charge as an acquittal by a jury; and

(3.) The court may make the like order for the restitution of the property stolen, taken, or obtained by false pretences, as might have been made by the court before which the

A.D. 1877.

person convicted would have been tried if he had been tried on indictment; and

(4.) The conviction or a duplicate of the certificate of dismissal, together with the charge, and the statement as to the consent in the case of a child of his parent or guardian (if any), and in the case of any other person, of such person, to be tried by a court of summary jurisdiction, shall be transmitted by the court dealing with the case to the court of general or quarter sessions for the county, borough, or place for which the court of summary jurisdiction acts, there to be kept among the records of the court, and a copy of such conviction or certificate purporting to be certified by the proper officer of the court, or otherwise proved to be a true copy, shall be sufficient evidence to prove the conviction or dismissal.

Costs of prosecution of indictable offences dealt with summarily.

21. Where an indictable offence is dealt with summarily in pursuance of this Act, the court may, if it thinks fit, grant to the person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court deem reasonable for his expenses, trouble, and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made with respect to the payment of costs in the case of indictable offences, and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace, and such other expenses as are by law payable when incurred before a commitment for trial, and every certificate so granted shall have the effect of an order of Court for the payment of the expenses of a prosecution, made in pursuance of the Act of the seventh year of King George the Fourth, chapter sixty-four, intituled "An Act for improving the administration of criminal justice in England," and the Acts amending the same, and the compensation allowed by such certificate shall be paid in like manner as the costs, specified in such order, would have been paid.

Power of the Lord Chancellor to make rules.

22. The Lord Chancellor of Great Britain may from time to time make, and when made, rescind, alter, and add to rules in relation to the following matters or any of them; that is to say,—

(1.) With respect to giving security under this Act; and

(2.) With respect to the forms to be used under the Summary Jurisdiction Acts or any of them; and

(3.) With respect to the costs and charges payable under distress warrants issued by a court of summary jurisdiction; and

(4.) With respect to any other matter with respect to which rules are authorised or required to be made under this Act.

The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other Act.

Any rule purporting to be made in pursuance of this section shall be presumed to be within the powers of this Act, and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed, and shall be of the same validity as if it had been enacted by Parliament.

PART II.

Amendment of Procedure.

Appeal.

23. Where any person is authorised by this Act or any Act of Parliament passed after the commencement of this Act to appeal from the decision of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county or place in which the decision of the court was given, and holden not less than twenty-one days after the day on which such decision was given; and

(2.) The appellant shall, within the prescribed time, or if no time is prescribed within ten days after the day on which decision of the court was given, give notice to the other party and to the clerk of the court of summary jurisdiction of his intention to appeal, and the general grounds of such appeal; and

(3.) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with two sufficient sureties, conditioned to appear at the said sessions and to try such

A.D. 1877.

appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or if such appeal is against a decision whereby only a sum of money is adjudged to be paid, the appellant may, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as a court of summary jurisdiction may allow; and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if it thinks fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just; and

(6.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that such conviction or order has been so reversed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(7.) Every notice in writing required by this section to be given by an appellant may be signed by him, or by his attorney on his behalf, and may be transmitted by the post in the ordinary way.

Summary orders.

24. Where power is given by any Act of Parliament passed after the commencement of this Act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as

to time or mode of action it may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

Any person making default in complying with any order of a court of summary jurisdiction in relation to any matter other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed he may in the discretion of the court be ordered to pay a fine not exceeding *one pound* for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than *two months*, or to a fine or fines exceeding in the aggregate *twenty pounds*.

Recovery of civil debts in court of summary jurisdiction.

25. Any sum which by this Act, or by any Act passed after the commencement of this Act, is declared to be a civil debt, and in respect of the recovery of which jurisdiction is given to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; Provided as follows:—

(1.) Such complaint shall be deemed to be a civil and not a criminal proceeding; and

(2.) A warrant shall not be issued for apprehending any person for failing to appear to answer a complaint in any such civil proceeding as aforesaid; and

(3.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid shall not, in default of distress or otherwise, be enforced by imprisonment, unless it is proved to the satisfaction of the court that the person making default in payment of such civil debt either has or has had since the date of the order the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time

A.D. 1877.

being in force in relation to the summoning and examination of witnesses, and made in pursuance of the Employers and Workmen Act, 1875.

Pleadings and forfeitures.

26. The following enactments shall apply to offences triable by courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law; and
2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating the offence may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same; and
4. All forfeitures incurred in respect of any offence triable by a court of summary jurisdiction may be sold or disposed of in such manner as the court having cognizance of the case in which the forfeiture is incurred may direct, and the proceeds of such sale shall be applied in the like manner as fines.

Case from quarter sessions without certiorari.

27. A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination in relation to which a special case is stated by any court of general or quarter sessions for obtaining the judgment or determination of a superior court.

Proof by affidavit of service of process.

28. In any proceeding within the jurisdiction of a court of summary jurisdiction, service on any person of any summons, notice, or other process or document required or authorised to be served may be proved by affidavit purporting to be sworn before any justice of the peace, or any commissioner to administer oaths in the Supreme Court of Judicature, or any registrar of a county court, and any such affidavit shall, until the contrary be shown, be taken to be sufficient proof of the statements contained therein, and shall be received in evidence in any court of summary jurisdiction, or in any other court of justice, or in any legal proceeding, without proof of the signatures or of the official character of the

person or persons taking or signing the same, and the fee for taking such affidavit shall be such sum, not exceeding *one shilling*, as may be directed by rules made in pursuance of this Act, and any such fee shall be costs in the matter or proceeding to which it relates.

Procedure on the execution of distress warrants.

29. The following regulations shall be enacted with respect to warrants of distress issued by or in pursuance of a conviction or order of a court of summary jurisdiction:

(1.) A warrant of distress shall be executed by or under the direction of a constable; and

(2.) A distress shall be sold by public auction, and one clear day at the least shall intervene between the sale and the making of the distress, but subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of five days from the date of the warrant, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid; and

(3.) Subject to any directions to the contrary which may be given by the warrant authorising the distress, the goods shall not be removed from the house of the person against whom the distress is levied until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by placing on or affixing to each article a conspicuous mark, and any person removing any goods so impounded, on or to which such mark is placed or affixed, or defacing or removing the mark so placed or affixed, shall on summary conviction be liable to a fine not exceeding *five pounds;* and

(4.) Where any person charged with the execution of a warrant of distress retains from the produce of any goods sold to satisfy the distress, or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding *five pounds;* and

(5.) A written account of the costs and charges incurred by a constable in respect of the execution of any warrant of distress, shall be sent by him to the clerk of the court of summary jurisdiction by which the warrant was issued; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account at any reasonable time to be appointed by the court, and to take a copy of such account; and

A.D. 1877.

(6.) A constable charged with the execution of a warrant of distress may himself sell the distress by auction without procuring any license to act as an auctioneer, or he may cause the same to be sold by some auctioneer duly licensed, and may deduct out of the amount realised by such sale all costs or charges actually incurred in effecting such sale; and

(7.) Where any person against whom a warrant of distress is issued pays or tenders to the constable having the execution of the same the sum mentioned in such warrant, or produces the receipt of the clerk of a court of summary jurisdiction for the same, and also pays the amount of the expenses of such distress up to the time of such payment or tender, the constable shall not execute the warrant; and

(8.) The constable who sells or causes to be sold any distress shall render to the owner the overplus, if any, after retaining the amount of the sums and charges allowed.

Return of property by order of Court.

30. Where any property has been taken from any person charged with any offence before a court of summary jurisdiction, a statement shall be made to the court of summary jurisdiction before whom such person is brought of the fact of such property having been taken from the person charged, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and the safety of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

Special definitions for purposes of the Act.

31. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

"Child" means a person who in the opinion of the court before which he is brought is under the age of *twelve years:*

"Young person" means a person who in the opinion of the court before which he is brought is of the age of *twelve years* and under the age of *sixteen years:*

"Prescribed" means prescribed or provided by any Act, passed before or after the commencement of this Act, which relates to any offences, penalties, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

"Fine" includes any pecuniary forfeiture or pecuniary compensation payable under a conviction:

"A sum adjudged to be paid by a conviction or order" includes any sum in respect of which a court of summary jurisdiction can issue a warrant of distress:

"Local rate" means as respects any county, borough, or place any county rate, borough rate, or other local rate, out of which the costs of the prosecution of any felony committed within such county, borough, or place are payable.

General Definitions.

General definitions applicable to Acts in general.

32. In this Act and any Act of Parliament passed after the commencement of this Act, if not inconsistent with the context, the following expressions shall have the meanings herein-after respectively assigned to them; that is to say,

"The Summary Jurisdiction Act, 1848," means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to "facilitate the performance of the duties of justices of the "peace out of sessions, within England and Wales, with "respect to summary convictions and orders:"

"Summary Jurisdiction Acts" or "Summary Jurisdiction (English) Acts" means the Summary Jurisdiction Act, 1848, and any Acts (including this Act) passed or to be passed amending the Summary Jurisdiction Act, 1848:

"Court of summary jurisdiction" means—

Any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorized to act under the Summary Jurisdiction Acts;

A court of summary jurisdiction shall be deemed to be sitting in session—

When such court is constituted either of two or more justices of the peace sitting at some court or other public place at which justices are for the time being accustomed to assemble for holding special or petty sessions, or of some other magistrate or officer sitting alone or with others at some police or open court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace:

A court of summary jurisdiction shall be deemed to be sitting out of session—

When it is constituted of a justice or justices of the peace or other magistrate or magistrates sitting in such manner

A.D. 1877.

or at such place or otherwise so constituted as not to be within the description of a court of summary jurisdiction sitting in session.

Application of Acts.

Summary Jurisdiction Acts, how applied to other Acts.

33. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any Act of Parliament passed after the commencement of this Act; that is to say,

(1.) Where in any Act passed after the commencement of this Act, any offence is directed or authorised to be prosecuted summarily, or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used in relation to such offence or fine implying that such offence or fine is to be prosecuted or recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(2.) Where any sum of money is directed or authorised by any Act passed after the commencement of this Act to be recovered summarily, or on complaint made to a court of summary jurisdiction, or in a summary manner, or any other words are used in relation to such sum of money implying that such sum of money is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(3.) Where in any Act passed after the commencement of this Act a court of summary jurisdiction is authorised to require any person to do or abstain from doing any act or thing other than the payment of a sum of money; or where any act or thing other than the payment of a sum of money is required or authorised to be done by an order of a court of summary jurisdiction, or is declared capable of being enforced summarily, or by summary order; or where any words are used in relation to such act or thing implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly.

Savings, and Construction. A.D. 1877.

Saving for Army and Militia Acts. See 38 & 39 Vict. c. 69. s. 87.

34. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, shall not apply to any proceedings taken under any Act for punishing mutiny and desertion, or under any Act relating to the militia.

Exceptions from Act.

35. This Act shall not nor shall any repeal thereunder apply to any information, complaint, or other proceeding under or by virtue of any of the statutes relating to any of Her Majesty's revenues under the control of the Commissioners of Inland Revenue or the Commissioners of Customs.

Construction of Act.

36. This Act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such Acts respectively.

Repeal.

Note.—See Third Schedule to Act.

Repeal of Acts.

37. There shall be repealed as from the commencement of this Act—

(1.) The Acts mentioned in the Third Schedule to this Act to the extent in the third column of that schedule mentioned; and

(2.) So much of any other Act as is inconsistent with this Act.

Provided, that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed;

(3.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment hereby repealed:

(4.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, fine, forfeiture, or punishment as aforesaid.

Where any unrepealed Act of Parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

A.D. 1877.

SCHEDULES.

FIRST SCHEDULE.

1. Simple larceny.
2. Offences declared to be punishable as simple larceny.
3. Larceny from or stealing from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods.
7. Obtaining money under false pretences.
8. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny.
9. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person.
10. Attempt to obtain money under false pretences.
11. The offences or any of them in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England "and Ireland relating to offences against the person."
12. The offences or any of them relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the "statute law of England and Ireland relating to malicious injuries "to property."

SECOND SCHEDULE.

1. Simple larceny where the whole of the value of the property alleged to have been stolen, does not, in the opinion of the court before which the charge is brought exceed forty shillings.

2. Larceny from or stealing from the person where the whole of the value of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

3. Larceny as a clerk or servant where the whole of the value of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

4. Embezzlement by a clerk or servant where the whole of the value of the property alleged to have been embezzled does not in the opinion of the court before which the charge is brought exceed forty shillings.

5. Obtaining money under false pretences where the whole of the value of the property alleged to have been obtained under false pretences does not in the opinion of the court before which the charge is brought exceed forty shillings.

6. Aiding, abetting, counselling, or procuring the commission of simple larceny.

7. Attempt to commit simple larceny.

8. Attempt to commit larceny or to steal from the person.

9. Attempt to obtain money under false pretences.

A.D. 1877.

THIRD SCHEDULE.

Session and Chapter.	Title or Abbreviated Title.	Extent of Repeal.
10 & 11 Vict. c. 82 -	An Act for the more speedy trial and punishment of juvenile offenders.	The whole Act.
13 & 14 Vict. c. 37 -	An Act for the further extension of summary jurisdiction in cases of Larceny.	The whole Act, in so far as relates to England.
18 & 19 Vict. c. 126 -	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as relates to England, except sections twenty - two, twenty-three, and twenty-four.
27 & 28 Vict. c. 80 -	An Act to extend the provisions of the Criminal Justice Act, 1855, to the Liberties of the Cinque Ports, and to the district of Romney Marsh in the county of Kent.	The whole Act.
27 & 28 Vict. c. 110 -	An Act for the amendment of the law relating to the mitigation of penalties.	The whole Act.
28 & 29 Vict. c. 127 -	An Act to amend the law relating to small penalties.	The whole Act.
31 & 32 Vict. c. 116 -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as relates to England.
34 & 35 Vict. c. 78 -	An Act to amend the law respecting the Inspection and Regulation of Railways.	Section thirteen, in so far as relates to England.

Summary Jurisdiction Amendment.

A

B I L L

To amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction.

(*Prepared and brought in by Mr. Secretary Cross, Mr. Solicitor General, and Sir Henry Selwin-Ibbeston.*)

Ordered, by The House of Commons, *to be Printed,* 17 *April* 1877.

[Bill 137.]

Under 4 *oz.*

Summary Jurisdiction Amendment Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title of Act.
2. Application of Act.
3. Commencement of Act.

PART I.

Court of Summary Jurisdiction.

4. Mitigation of punishment by court.
5. Scale of imprisonment for nonpayment of money.
6. Payment by instalments of or security taken for fines and other sums.
7. Costs to be included in small fines.
8. Estreat of recognizances.
9. Summary conviction with consent of parent or guardian of children.
10. Summary conviction with consent of young persons.
11. Summary conviction with consent of adult.
12. Summary conviction on plea of guilty of young person or adult.
13. Trial by jury in case of offences triable summarily.
14. Appeal from summary conviction to general or quarter sessions.
15. Constitution of court of court of summary jurisdiction when trying offences.
16. Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

Supplemental Provisions.

17. Regulations as to securities taken in pursuance of Act.
18. Payment to local treasurer of certain fines and estreats.
19. Power of court of summary jurisdiction to remand.
20. Power of court of summary jurisdiction with respect to sureties.
21. Regulations as to indictable offences dealt with summarily.
22. Costs of prosecution of indictable offences dealt with summarily.
23. Power of the Lord Chancellor to make rules.

Clause.

PART II.

Amendment of Procedure.

24. Appeal to general or quarter sessions.
25. Summary orders.
26. Recovery of civil debts in court of summary jurisdiction.
27. Pleadings and forfeitures.
28. Case from quarter sessions without certiorari.
29. Proof by affidavit of service of process.
30. Recognizances taken out of court.
31. Procedure on the execution of distress warrants.
32. Return of property by order of Court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

33. Special definitions for purposes of the Act.

General Definitions.

34. General definitions applicable to Acts in general.

Application of Acts.

35. Summary Jurisdiction Acts, how applied to other Acts.

Savings, and Construction.

36. Saving for Army and Militia Acts.
37. Exceptions from Act.
38. Construction of Act.

Repeal.

39. Repeal of Acts.

SCHEDULES.

A

B I L L

[AS AMENDED IN COMMITTEE]

TO

Amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction. A.D. 1877

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as The Summary Jurisdiction Act, 1877.

Application of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-eight (which day is in this Act referred to as the commencement of this Act).

PART I.

Court of Summary Jurisdiction.

Mitigation of punishment by court.

4. Where a court of summary jurisdiction has authority to adjudge any person to be imprisoned, or to adjudge any person to pay a fine, the court may, notwithstanding any enactment to the contrary, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof: And where the punishment directed by this or any other Act of Parliament to be inflicted in respect of any offence punishable on summary conviction, and not being by law a felony, is imprisonment, and no option of a fine is given, a court of summary jurisdiction may, notwithstanding, if the court thinks the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding ten pounds.

Scale of imprisonment for non-

5. The period of imprisonment to be imposed by a court of summary jurisdiction in respect of the nonpayment of any sum

A.D. 1877.

payment of money.

or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by such conviction or order, or in respect of the default of a distress to satisfy any such sum or sums, shall, notwithstanding any enactment to the contrary, be regulated by the following scale; that is to say,

Where the sum or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by the conviction or order	The period of imprisonment to be adjudged in respect of the non-payment of such sum or sums, or of the default of a distress to satisfy such sum or sums, shall not exceed
Does not or do not exceed ten shillings -	Seven days.
Exceeds or exceed ten shillings but does not or do not exceed one pound - -	Fourteen days.
Exceeds or exceed one pound but does not or do not exceed five pounds - -	One month.
Exceeds or exceed five pounds but does not or do not exceed twenty pounds -	Two months.
Exceeds or exceed twenty pounds -	Three months.

Payment by instalments of or security taken for fines and other sums.

6. A court of summary jurisdiction may allow time for the payment of any sum adjudged to be paid by a conviction or order, or direct payment to be made of any such sum by instalments.

The court may also accept security from any person adjudged to pay any sum by a conviction or order, with or without a surety or sureties, for the payment of such sum or any instalment thereof, and may enforce such security in manner provided by this Act.

Where any sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

The payment of any sum or of an instalment of any sum in pursuance of this section may be directed to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court.

Costs to be included in small fines.

7. Where a fine imposed on any person on his conviction for any offence by a court of summary jurisdiction does not exceed five shillings, then, unless the court for special reasons thinks fit to order otherwise, such fine shall be deemed to include costs, and an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, unless it thinks fit for special reasons to order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also

order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Estreat of recognizances.

8. A court of summary jurisdiction may enforce payment of any recognizance taken before a court of summary jurisdiction, or taken before a constable, and appearing to the court to be forfeited where such recognizance is conditioned for the appearance of any person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in or to a court of summary jurisdiction or in a proceeding in a court of summary jurisdiction, in the same manner as if the money payable under such recognizance were a fine.

Where a recognizance to keep the peace or to be of good behaviour has been entered into by any person as principal or surety before a court of summary jurisdiction, it shall be lawful for a court of summary jurisdiction, upon information laid before the court and proof of the conviction of the person bound as principal by such recognizance of any offence, which is in law a breach of the condition of the same, to adjudge such recognizance to be forfeited, and to adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

Summary conviction with consent of parent or guardian of children.

9. Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if it thinks it expedient so to do, and if the parent or guardian of the child so charged when informed by the court of his right to have the child tried by a jury consents to his being tried summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided as follows:

(1.) That a sentence of penal servitude shall not be passed, but imprisonment be substituted therefor; and

(2.) That in the case of imprisonment, the term awarded shall not in any case exceed one month; and

(3.) That in the case of a fine, the amount awarded shall not in any case exceed forty shillings; and

(4.) That when the child is a male the court may, instead of any other punishment, order the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police, and also in the presence, if he desires to be present, of the parent or guardian of the child.

A.D. 1877.

For the purpose of informing the parent or guardian of his right to have the child tried by a jury in the case of an indictable offence, the court of summary jurisdiction shall, at the conclusion of the case for the prosecution, address a question to such parent or guardian to the following effect: "Do you desire the child to be "tried by a jury, or do you consent to the case being dealt with "summarily?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

Where the parent or guardian is not present when a child is charged with an indictable offence before a court of summary jurisdiction, the court may, if it thinks it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian with a view so far as is practicable of securing his attendance in court, or the court may deal with the offence as an indictable offence.

The expenses of the summary prosecution of an indictable offence under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, but not to a greater amount in any one case than *forty shillings*, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is tried, of sufficient age and capacity to commit crime.

If upon the hearing of any charge against a child in respect of any offence triable under this section or otherwise punishable on summary conviction the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

A child shall not, on summary conviction for any offence under this Act or any other Act of Parliament, be imprisoned for a longer period than one month, or be fined a larger sum than forty shillings.

Summary conviction with consent

10. Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule.

Schedule hereto, the court, if it thinks it expedient so to do, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and in its discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding three pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months; and if the young person is a male, and, in the opinion of the court, under the age of fourteen years, the court, if it thinks it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police.

A.D. 1877.

of young persons.

25 & 26 Vict. c. 18.

For the purpose of informing a young person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such young person to the following effect: "Do you desire to be tried "by a jury, or do you consent to the case being dealt with sum- "marily?"—with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

If upon the hearing of any charge against a young person in respect of any indictable offence specified in the First Schedule hereto, or in respect of any offence punishable on summary conviction, the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may, dismiss the young person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

te.—See ond Schee.

11. Where a person is charged before a court of summary jurisdiction with any indictable offence specified in the Second Schedule hereto, the court, if it thinks it expedient so to do, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and adjudge such person, if found

Summary conviction, with consent of adult.

A.D. 1877.

guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months.

For the purpose of informing a person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address to such person a question to the following effect: "Do you desire to be tried by a jury, or "do you consent to the case being dealt with summarily?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

If upon the hearing of any charge against a person in respect of an indictable offence specified in the said Second Schedule hereto the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss such person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

This section shall not apply to the case of a child or young person.

Summary conviction on plea of guilty of young person or adult.

12. Where any person is charged before a court of summary jurisdiction with any indictable offence specified in the said First Schedule hereto, and the evidence on the conclusion of the case for the prosecution is, in the opinion of such court, sufficient to put the person charged on his trial for the offence with which he is charged, and the case appear to the court to be one which may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, in any such case as aforesaid the court shall reduce the charge into writing, and shall read it to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered upon the proceedings, and adjudge him, if a young person, or if the offence be one specified in the second schedule hereto, to any punishment which might have been adjudged to him in pursuance of this Act if he had consented to

Note.—S
First Sc
dule.

be tried summarily in manner in this Act mentioned; and in any other case may adjudge him to be imprisoned, with or without hard labour, for any term not exceeding *six months*.

The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he do not plead or answer, he will be dealt with in the usual course.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not apply to a child.

Trial by jury in case of offences triable summarily.

13. Any person when charged before a court of summary jurisdiction with any offence in respect of the commission of which he is liable on summary conviction to be imprisoned for a term exceeding three months, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him as follows, or to the like effect: "You are charged with an offence in respect "of the commission of which you are entitled, if you desire it, "to be tried by a jury, do you desire to be tried by a jury, or do "you consent to the case being dealt with summarily?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

Appeal from summary conviction to general or quarter sessions.

14. Where, in pursuance of this Act, or of any Act of Parliament passed before or after the commencement of this Act, any person is sentenced to imprisonment by a court of summary jurisdiction as a punishment for his offence, or for refusing to do or to abstain

A.D. 1877.

from doing any act or thing required to be done or left undone other than the payment of money, and not in respect of the non-payment of a fine or other sum of money, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, he may appeal to a court of general or quarter sessions against such sentence.

Constitution of court of summary jurisdiction when trying offences.

15. A court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter under this or any other Act of Parliament, or enforcing payment of any money due under any security or recognizance in pursuance of this Act, shall, save as in this section is otherwise provided, and notwithstanding any enactment to the contrary, be a court of summary jurisdiction sitting in session as defined by this Act.

Provided, that—

(1.) Any offence specified in sections three and four of the Vagrant Act, or either of those sections; also

(2.) The offence of being found drunk in any highway or other public place, or in licensed premises;

may, where it appears to the court inconvenient to delay the trial of the case, be heard, tried, determined, and adjudged by a court of summary jurisdiction sitting out of session.

"The Vagrant Act" in this section means the Act of the fifth year of the reign of King George the Fourth, chapter eighty-three, intituled "An Act for the punishment of idle and disorderly persons, "and rogues and vagabonds, in that part of Great Britain called "England."

A court of summary jurisdiction sitting out of session may adjourn the hearing of any case to the next practicable court of summary jurisdiction sitting in session, in the same manner in all respects as a justice is authorised to adjourn the hearing of a case under the sixteenth section of the Summary Jurisdiction Act, 1848.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

16. A court of summary jurisdiction, if it deems it expedient so to do, may postpone the issue of a warrant for committing a person to prison for nonpayment of a sum of money adjudged to be paid by a conviction or order, or for default of distress to satisfy any such sum, or the issue of a warrant of distress, until such time and on such conditions, if any, as to the court may seem just.

The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his

trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Where a person is adjudged by the conviction or order of a court of summary jurisdiction to pay a sum or sums of money, on default of payment of which a warrant of distress is authorised to be issued, if it is contended by or on behalf of such person that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, the court, if it is satisfied of the truth of such contention, instead of issuing such warrant of distress, may order the person liable to pay such money, on nonpayment thereof to be imprisoned for any period not exceeding the period for which he is liable to be imprisoned in default of distress to satisfy such money.

Where, on the return of a warrant of distress issued by a court of summary jurisdiction, it appears to the court that the goods and chattels of the defendant, although insufficient to satisfy the whole amount adjudged to be paid by the conviction or order, have, after payment of the costs of the distress, reduced the amount so adjudged to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and command the defendant to be imprisoned for such less maximum term, instead of for the term originally mentioned in the conviction or order.

Supplemental Provisions.

Regulations as to securities taken in pursuance of Act.

17. A person shall give security under this Act, whether as principal or surety, by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be prescribed by any rule made in pursuance of this Act and for the time being in force.

The payment of any sum by a principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction in manner in which that court is authorised to enforce payment of a fine of like amount.

A.D. 1877.

The payment of any sum payable by a surety on behalf of his principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction as a civil debt due from him in the manner in which civil debts are directed to be enforced by such court under this Act and not otherwise.

Any sum paid by a surety on behalf of his principal in respect of a forfeited security under this Act, together with all costs, charges, and expenses incurred by such surety in respect of his security, shall be deemed a civil debt due to him from the principal, and may be enforced by a court of summary jurisdiction in manner in which civil debts are directed to be enforced by such court under this Act, and not otherwise.

Payment to local treasurer of certain fines and estreats.

18. Subject as in this section after mentioned, there shall be paid to the treasurer of the county, borough, or place for which a court of summary jurisdiction acts—

(1.) All fines adjudged to be paid by any conviction of such court and directed by any Act of Parliament to be paid into the Exchequer, or to Her Majesty, or to any person or persons for the use of Her Majesty; also

(2.) All sums paid in pursuance of the order of such court under any forfeited recognizance or any recognizance to keep the peace or be of good behaviour.

Nothing in this section shall affect the payment of any sums payable to the receiver of the metropolitan police district.

Power of court of summary jurisdiction to remand.

19. Where a court of summary jurisdiction has cognizance of any indictable offence with which it has or may have, under the circumstances in this Act mentioned, power to deal summarily, such court may, for the purpose of ascertaining whether the case is of such a nature as ought to be dealt with summarily, either before or during the hearing of the case, adjourn the case for any time not exceeding eight clear days. And further, when a court of summary jurisdiction having cognizance of a charge of any such offence as in this section mentioned is not at the time of the charge being brought before it sitting in session, it may, if it thinks the case proper to be dealt with summarily in pursuance of this Act, adjourn the case till the next practicable court of summary jurisdiction sitting in session.

Where any case is adjourned in pursuance of this section, the court adjourning the same may commit the person charged with the offence to prison during the period of such adjournment, or may allow him to be at large on his entering into a recognizance with or without a surety or sureties conditioned for his appearance at the time and place to which the case is adjourned.

A.D. 1877.

Power of court of summary jurisdiction with respect to sureties.

20. Where any person has been committed to prison by a court of summary jurisdiction for default in finding sureties, a court of summary jurisdiction may, of its own motion, or on application made from time to time, inquire into the case of the person so imprisoned; and, having regard to all the circumstances, may, if it thinks it just so to do, reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court thinks just.

Regulations as to indictable offences dealt with summarily.

21. Where any indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily, the procedure shall, until the conclusion of the case for the prosecution, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment:

Provided as follows,—

(1.) The court may make the like order for the restitution of property in any case as might have been made by the court before which the person convicted would have been tried if he had been tried on indictment; and

(2.) The conviction shall contain a statement as to the consent in the case of a child of his parent or guardian, and in the case of any other person, of such person, to be tried by a court of summary jurisdiction.

Costs of prosecution of indictable offences dealt with summarily.

22. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this Act, the court may, if it thinks fit, grant to the person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court deems reasonable for his expenses, trouble, and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made with respect to the payment of costs in the case of indictable offences, and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace, and such other expenses as are by law payable when incurred before a commitment for trial, and every certificate so granted shall have the effect of an order of Court for the payment of the expenses of a prosecution for felony, made in pursuance of

A.D. 1877.

the Act of the seventh year of King George the Fourth, chapter sixty-four, intituled "An Act for improving the administration of criminal justice in England," and the Acts amending the same, and the compensation allowed by such certificate shall be paid in like manner as the costs, specified in such order, would have been paid.

Power of the Lord Chancellor to make rules.

23. The Lord Chancellor of Great Britain may from time to time make, and when made, rescind, alter, and add to rules in relation to the following matters or any of them; that is to say,—

(1.) With respect to giving security under this Act; and

(2.) With respect to the forms to be used under the Summary Jurisdiction Acts or any of them; and

(3.) With respect to the costs and charges payable under distress warrants issued by a court of summary jurisdiction; and

(4.) With respect to any other matter with respect to which rules are authorised or required to be made under this Act.

The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other Act.

Any rule purporting to be made in pursuance of this section shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed.

PART II.

Amendment of Procedure.

Appeal to general or quarter sessions.

24. Where any person is authorised by this Act or any Act of Parliament passed after the commencement of this Act to appeal from the decision of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county or place in which the decision of the court was given, and holden not less than twenty-one days after the day on which such decision was given; and

A.D. 1877.

(2.) The appellant shall, within the prescribed time, or if no time is prescribed within ten days after the day on which decision of the court was given, give notice to the other party and to the clerk of the court of summary jurisdiction of his intention to appeal, and the general grounds of such appeal; and

(3.) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or the appellant may, if the court thinks it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as the court deems sufficient; and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if it thinks fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just; and

(6.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that such conviction or order has been quashed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

A.D. 1877.

(7.) Every notice in writing required by this section to be given by an appellant may be signed by him, or by his agent on his behalf, and may be transmitted in a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Summary orders.

25. Where power is given by any Act of Parliament passed after the commencement of this Act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action it may think just, and may suspend or rescind any such order on such undertaking being given or condition being performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet.

Any person making default in complying with any order of a court of summary jurisdiction in relation to any matter other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed he may in the discretion of the court be ordered to pay a fine not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to a fine or fines exceeding in the aggregate twenty pounds.

Recovery of civil debts in court of summary jurisdiction.

26. Any sum which by this Act, or by any Act passed after the commencement of this Act, is declared to be a civil debt, and in respect of the recovery of which jurisdiction is given to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; Provided as follows:

(1.) Such complaint shall be deemed to be a civil and not a criminal proceeding; and

(2.) A warrant shall not be issued for apprehending any person for failing to appear to answer a complaint in any such civil proceeding as aforesaid; and

(3.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid shall not, in default of distress or otherwise, be enforced by imprisonment, unless it is proved to the satisfaction of the court that the person making default in payment of such civil debt either has or has had since the date of the order the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force in relation to the summoning and examination of witnesses, and made in pursuance of the Employers and Workmen Act, 1875.

Pleadings and forfeitures.

27. The following enactments shall apply to offences triable by courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law; and
2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating the offence may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same; and
4. All forfeitures incurred in respect of any offence triable by a court of summary jurisdiction may be sold or disposed of in such manner as the court having cognizance of the case in which the forfeiture is incurred may direct, and the proceeds of such sale shall be applied in the like manner as fines.

A.D. 1877.

Case from quarter sessions without certiorari.

28. A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination in relation to which a special case is stated by any court of general or quarter sessions for obtaining the judgment or determination of a superior court.

Proof by affidavit of service of process.

29. In any proceeding within the jurisdiction of a court of summary jurisdiction, service on any person of any summons, notice, or other process or document required or authorised to be served may be proved by affidavit purporting to be sworn before any justice of the peace, or any commissioner to administer oaths in the Supreme Court of Judicature, or any clerk of the peace or any registrar of a county court, and any such affidavit shall, until the contrary be shown, be taken to be sufficient proof of the statements contained therein, and shall be received in evidence in any court of summary jurisdiction, or in any other court of justice, or in any legal proceeding, without proof of the signatures or of the official character of the person or persons taking or signing the same, and the fee for taking such affidavit shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this Act, and any such fee shall be costs in the matter or proceeding to which it relates.

Recognizances taken out of court.

30. When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance need not be entered into before the court, but may, subject to any rules made in pursuance of this Act, be entered into by the parties in the presence of any clerk of a court of summary jurisdiction or any superior officer or inspector of the police; and thereupon all the consequences of law shall apply as if the recognizance had been entered into as heretofore by law required.

Procedure on the execution of distress warrants.

31. The following regulations shall be enacted with respect to warrants of distress issued by or in pursuance of a conviction or order of a court of summary jurisdiction:

(1.) A warrant of distress shall be executed by or under the direction of a constable; and

(2.) A distress shall be sold by public auction (unless the owner of the goods consents in writing to its being sold by private contract, in which case such sale may be made accordingly), and in the case of a public auction, five clear days at the least shall intervene between the making of the distress and the sale, but subject as aforesaid, the distress shall be sold within

the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the warrant, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid; and

(3.) Subject to any directions to the contrary which may be given by the warrant authorising the distress, the goods shall not be removed from the house of the person against whom the distress is levied until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by placing on or affixing to each article a conspicuous mark, and any person removing any goods so impounded, on or to which such mark is placed or affixed, or defacing or removing the mark so placed or affixed, shall on summary conviction be liable to a fine not exceeding five pounds; and

(4.) Where any person charged with the execution of a warrant of distress retains from the produce of any goods sold to satisfy the distress, or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds; and

(5.) A written account of the costs and charges incurred by a constable in respect of the execution of any warrant of distress, shall be sent by him as soon as practicable to the clerk of the court of summary jurisdiction by which the warrant was issued; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account at any reasonable time to be appointed by the court, and to take a copy of such account; and

(6.) A constable charged with the execution of a warrant of distress may himself sell the distress by auction without procuring any license to act as an auctioneer, or he may cause the same to be sold by some auctioneer duly licensed, and may deduct out of the amount realised by such sale all costs or charges actually incurred in effecting such sale; and

(7.) Where any person against whom a warrant of distress is issued pays or tenders to the constable having the execution of the same the sum mentioned in such warrant, or

A.D. 1877.

produces the receipt of the clerk of a court of summary jurisdiction for the same, and also pays the amount of the expenses of such distress up to the time of such payment or tender, the constable shall not execute the warrant; and

(8.) The constable who sells or causes to be sold any distress shall render to the owner the overplus, if any, after retaining the amount of the sums and charges allowed.

Return of property by order of Court.

32. Where any property has been taken from any person charged with any offence before a court of summary jurisdiction, a statement shall be made to the court of summary jurisdiction before whom such person is brought of the fact of such property having been taken from the person charged, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and the safety of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

Special definitions for purposes of the Act.

33. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

"Child" means a person who in the opinion of the court before which he is brought is under the age of twelve years:

"Young person" means a person who in the opinion of the court before which he is brought is of the age of twelve years and under the age of sixteen years:

"Person" includes a child and young person:

"Parent or guardian," in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such child:

"Prescribed" means prescribed or provided by any Act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

"Fine" includes any pecuniary forfeiture or pecuniary compensation payable under a conviction:

"A sum adjudged to be paid by a conviction or order" includes any sum in respect of which a court of summary jurisdiction can issue a warrant of distress, and the amount of such last-mentioned sum shall be deemed to have been ascertained by a conviction or order:

"Local rate" means as respects any county, borough, or place any county rate, borough rate, or other local rate, out of which the costs of the prosecution of any felony committed within such county, borough, or place are payable.

General Definitions.

General definitions applicable to Acts in general.

34. In this Act and any Act of Parliament passed after the commencement of this Act, if not inconsistent with the context, the following expressions shall have the meanings herein-after respectively assigned to them; that is to say,

"The Summary Jurisdiction Act, 1848," means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to "facilitate the performance of the duties of justices of the "peace out of sessions, within England and Wales, with "respect to summary convictions and orders:"

"The Summary Jurisdiction Acts" or "The Summary Jurisdiction (English) Acts" means the Summary Jurisdiction Act, 1848, and any Acts (including this Act) passed or to be passed amending the Summary Jurisdiction Act, 1848:

"Court of summary jurisdiction" means—

Any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorised to act under the Summary Jurisdiction Acts or any of such Acts;

A court of summary jurisdiction shall be deemed to be sitting in session—

When such court is constituted either of two or more justices of the peace sitting at some court or other public place at which justices are for the time being accustomed to assemble for holding special or petty sessions, or of some magistrate or officer sitting alone or with others at some police or open court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace:

A.D. 1877.

A court of summary jurisdiction shall be deemed to be sitting out of session—

When it is constituted of a justice or justices of the peace or other magistrate or magistrates sitting in such manner or at such place or otherwise so constituted as not to be within the description of a court of summary jurisdiction sitting in session.

Application of Acts.

Summary Jurisdiction Acts, how applied to other Acts.

35. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any Act of Parliament passed after the commencement of this Act; that is to say,

(1.) Where in any Act passed after the commencement of this Act, any offence is directed or authorised to be prosecuted summarily, or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence or fine is to be prosecuted or recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(2.) Where in any Act passed after the commencement of this Act any sum of money is directed or authorised to be recovered summarily, or on complaint made to a court of summary jurisdiction, or in a summary manner, or any other words are used implying that such sum of money is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(3.) Where in any Act passed after the commencement of this Act a court of summary jurisdiction is authorised to require any person to do or abstain from doing any act or thing other than the payment of a sum of money; or where any act or thing other than the payment of a sum of money is required or authorised to be done by an order of a court of summary jurisdiction, or is declared capable of being enforced summarily, or by summary order; or where any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly.

Savings, and Construction.

A.D. 1877.

Saving for Army and Militia Acts. See 38 & 39 Vict. c. 69. s. 87.

36. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, and in the case of imprisonment, to impose a fine in lieu of imprisonment, shall not apply to any proceedings taken under any Act for punishing mutiny and desertion, or under any Act relating to the militia.

Exceptions from Act.

37. This Act shall not nor shall any repeal thereunder apply to any information, complaint, or other proceeding, or any sums recovered under or by virtue of any of the statutes relating to any of Her Majesty's revenues under the control of the Commissioners of Inland Revenue or the Commissioners of Customs.

Construction of Act.

38. This Act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such Acts respectively.

Repeal.

—See l dule to

Repeal of Acts.

39. There shall be repealed as from the commencement of this Act—

(1.) The Acts mentioned in the Third Schedule to this Act to the extent in the third column of that schedule mentioned; and

(2.) So much of any other Act as is inconsistent with this Act.

Provided, that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired or any liability incurred before the commencement of this Act under any enactment hereby repealed; or

(3.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment hereby repealed; or

(4.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, fine, forfeiture, or punishment as aforesaid.

Where any unrepealed Act of Parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

A.D. 1877.

SCHEDULES.

FIRST SCHEDULE.

1. Simple larceny.
2. Offences declared to be punishable as simple larceny.
3. Larceny from or stealing from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six, or in either of such sections.
7. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid.
8. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny.
9. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person.
10. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.
11. The offences or any of them in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England "and Ireland relating to offences against the person."
12. The offences or any of them relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the "statute law of England and Ireland relating to malicious injuries "to property."

SECOND SCHEDULE.

A.D. 1877.

1. Simple larceny where the value of the whole of the property alleged to have been stolen, does not, in the opinion of the court before which the charge is brought exceed forty shillings.

2. Larceny from or stealing from the person where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

3. Larceny as a clerk or servant where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

4. Embezzlement by a clerk or servant where the value of the whole of the property embezzled does not in the opinion of the court before which the charge is brought exceed forty shillings.

5. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid, where the value of the whole of the property alleged to have been obtained under false pretences does not in the opinion of the court before which the charge is brought exceed forty shillings.

6. Aiding, abetting, counselling, or procuring the commission of simple larceny.

7. Attempt to commit simple larceny.

8. Attempt to commit larceny from or steal from the person.

9. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.

A.D. 1877.

THIRD SCHEDULE.

Session and Chapter.	Title or Abbreviated Title.	Extent of Repeal.
10 & 11 Vict. c. 82 -	An Act for the more speedy trial and punishment of juvenile offenders.	The whole Act.
13 & 14 Vict. c. 37 -	An Act for the further extension of summary jurisdiction in cases of Larceny.	The whole Act, in so far as relates to England.
18 & 19 Vict. c. 126 -	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as relates to England, except sections eighteen, twenty, twenty-two, twenty-three, and twenty-four.
27 & 28 Vict. c. 80 -	An Act to extend the provisions of the Criminal Justice Act, 1855, to the Liberties of the Cinque Ports, and to the district of Romney Marsh in the county of Kent.	The whole Act.
27 & 28 Vict. c. 110 -	An Act for the amendment of the law relating to the mitigation of penalties.	The whole Act.
28 & 29 Vict. c. 127 -	An Act to amend the law relating to small penalties.	The whole Act.
31 & 32 Vict. c. 116 -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as relates to England.
34 & 35 Vict. c. 78 -	An Act to amend the law respecting the Inspection and Regulation of Railways.	Section thirteen, in so far as relates to England.

Summary Jurisdiction Amendment.

A

B I L L

[AS AMENDED IN COMMITTEE]

To amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction.

(*Prepared and brought in by Mr. Secretary Cross, Mr. Solicitor General, and Sir Henry Selwin-Ibbetson.*)

Ordered, by The House of Commons, *to be Printed,* 17 *May* 1877.

[Bill 173.]

Under 4 *oz.*

Summary Jurisdiction Amendment Bill.

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT.]

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title of Act.
2. Application of Act.
3. Commencement of Act.

PART I.

Court of Summary Jurisdiction.

4. Mitigation of punishment by court.
5. Scale of imprisonment for nonpayment of money.
6. Payment by instalments of or security taken for fines and other sums.
7. Costs to be included in small fines.
8. Estreat of recognizances.
9. Summary conviction with consent of parent or guardian of children.
10. Summary conviction with consent of young persons.
11. Summary conviction with consent of adult.
12. Summary conviction on plea of guilty of young person or adult.
13. Trial by jury in case of offences triable summarily.
14. Appeal from summary conviction to general or quarter sessions.
15. Constitution of court of summary jurisdiction when trying offences.
16. Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

Supplemental Provisions.

17. CLAUSE A.—Register to the clerk of court of summary jurisdiction.
18. Regulations as to securities taken in pursuance of Act.
19. Power of court of summary jurisdiction to remand.
20. Power of court of summary jurisdiction with respect to sureties.
21. Regulations as to indictable offences dealt with summarily.
22. Costs of prosecution of indictable offences dealt with summarily.
23. Power of the Lord Chancellor to make rules.

PART II.

Amendment of Procedure.

Clause.
24. Appeal to general or quarter sessions.
25. Summary orders.
26. Recovery of civil debts in court of summary jurisdiction.
27. Pleadings and forfeitures.
28. Case from quarter sessions without certiorari.
29. Proof by affidavit of service of process.
30. Recognizances taken out of court.
31. Procedure on the execution of distress warrants.
32. Return of property by order of Court.

PART III.

DEFINITIONS, SAVINGS, AND REPEAL OF ACTS.

Special Definitions.

33. Special definitions for purposes of the Act.

General Definitions.

34. General definitions applicable to Acts in general.

Application of Acts.

35. Summary Jurisdiction Acts, how applied to other Acts.

Savings, and Construction.

36. Saving for Army and Militia Acts.
37. Exceptions from Act.
38. Construction of Act.

Repeal.

39. Repeal of Acts.
SCHEDULES.

A

B I L L

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT]

TO

Amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as The Summary Jurisdiction Act, 1877.

Application of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-eight (which day is in this Act referred to as the commencement of this Act).

PART I.

Court of Summary Jurisdiction.

Mitigation of punishment by court.

4. Where a court of summary jurisdiction has authority to adjudge any person to be imprisoned, or to adjudge any person to pay a fine, the court may, notwithstanding any enactment to the contrary, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof: And where the punishment directed by this or any other Act of Parliament to be inflicted in respect of any offence punishable on summary conviction, and not being by law a felony, is imprisonment, and no option of a fine is given, a court of summary jurisdiction may, notwithstanding, if the court thinks the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceding ten pounds.

Scale of imprisonment for non-

5. The period of imprisonment to be imposed by a court of summary jurisdiction in respect of the nonpayment of any sum

A.D. 1877.

payment of money.

or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by such conviction or order, or in respect of the default of a distress to satisfy any such sum or sums, shall, notwithstanding any enactment to the contrary, be regulated by the following scale; that is to say,

Where the sum or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by the conviction or order	The period of imprisonment to be adjudged in respect of the nonpayment of such sum or sums, or of the default of a distress to satisfy such sum or sums, shall not exceed
Does not or do not exceed ten shillings	Seven days.
Exceeds or exceed ten shillings but does not or do not exceed one pound	Fourteen days.
Exceeds or exceed one pound but does not or do not exceed five pounds	One month.
Exceeds or exceed five pounds but does not or do not exceed twenty pounds	Two months.
Exceeds or exceed twenty pounds	Three months.

Payment by instalments of or security taken for fines and other sums.

6. A court of summary jurisdiction may allow time for the payment of any sum adjudged to be paid by a conviction or order, or direct payment to be made of any such sum by instalments.

The court may also accept security from any person adjudged to pay any sum by a conviction or order, with or without a surety or sureties, for the payment of such sum or any instalment thereof, and may enforce such security in manner provided by this Act.

Where any sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

The payment of any sum or of an instalment of any sum in pursuance of this section may be directed to be made at such time or times, and in such place or places, and to such person or persons, as may be specified by the court.

Costs to be included in small fines.

7. Where a fine imposed on any person on his conviction for any offence by a court of summary jurisdiction does not exceed five shillings, then, unless the court for special reasons thinks fit to order otherwise, such fine shall be deemed to include costs, and an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, unless it thinks fit for special reasons to order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also

order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Estreat of recognizances.

8. A court of summary jurisdiction may enforce payment of any recognizance taken before a court of summary jurisdiction, or taken before a constable, and appearing to the court to be forfeited where such recognizance is conditioned for the appearance of any person before a court of summary jurisdiction, or for his doing some other matter or thing to be done in or to a court of summary jurisdiction or in a proceeding in a court of summary jurisdiction, in the same manner as if the money payable under such recognizance were a fine.

Where a recognizance to keep the peace or to be of good behaviour has been entered into by any person as principal or surety before a court of summary jurisdiction, it shall be lawful for a court of summary jurisdiction, upon information laid before the court and proof of the conviction of the person bound as principal by such recognizance of any offence, which is in law a breach of the condition of the same, to adjudge such recognizance to be forfeited, and to adjudge the persons bound thereby, whether as principal or sureties, or any of such persons, to pay the sums for which they are respectively bound.

The recognizances to which this section applies shall be dealt with in manner in this section mentioned, and, notwithstanding any enactment to the contrary, it shall not be the duty of any justices to transmit any recognizances to which this section applies to general or quarter sessions, or to certify the forfeiture of any such recognizances to general or quarter sessions.

All sums paid in pursuance of the order of a court of summary jurisdiction under any forfeited recognizance to which this section applies shall be paid to the treasurer of the county, borough, or place for which the court of summary jurisdiction acts, and shall be applied in the manner in which penalties payable to him under the Summary Jurisdiction Act, 1848, are applicable.

Summary conviction with consent of parent or guardian of children.

9. Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if it thinks expedient so to do, and if the parent or guardian of the child so charged when informed by the court of his right to have the child tried by a jury consents to his being tried summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided as follows:

(1.) That a sentence of penal servitude shall not be passed, but imprisonment be substituted therefor; and

A.D. 1877.

(2.) That in the case of imprisonment, the term awarded shall not in any case exceed one month; and

(3.) That in the case of a fine, the amount awarded shall not in any case exceed forty shillings; and

(4.) That when the child is a male the court may, instead of any other punishment, order the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police, and also in the presence, if he desires to be present, of the parent or guardian of the child.

For the purpose of informing the parent or guardian of his right to have the child tried by a jury in the case of an indictable offence, the court of summary jurisdiction shall, at the conclusion of the case for the prosecution, address a question to such parent or guardian to the following effect: "Do you desire the child to be "tried by a jury, or do you consent to the case being dealt with "summarily?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

Where the parent or guardian is not present when a child is charged with an indictable offence before a court of summary jurisdiction, the court may, if it thinks it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian with a view so far as is practicable of securing his attendance in court, or the court may deal with the offence as an indictable offence.

The expenses of the summary prosecution of an indictable offence under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, but not to a greater amount in any one case than *forty shillings*, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is tried, of sufficient age and capacity to commit crime.

If upon the hearing of any charge against a child in respect of any offence triable under this section or otherwise punishable on

summary conviction the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

A child shall not, on summary conviction for any offence under this Act or any other Act of Parliament, be imprisoned for a longer period than one month, or be fined a larger sum than forty shillings.

First Schedule.

10. Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule hereto, the court, if it thinks it expedient so to do, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and in its discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding three pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months ; and if the young person is a male, and, in the opinion of the court, under the age of fourteen years, the court, if it thinks it expedient so to do, may, either in substitution for or in addition to any other punishment under this Act, adjudge such young person to be privately whipped with not more than twelve strokes of a birch rod by a constable, in the presence of an inspector or other officer of police.

Summary conviction with consent of young persons.

25 & 26 Vict. c. 18.

For the purpose of informing a young person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such young person to the following effect: "Do you desire to be tried "by a jury, or do you consent to the case being dealt with sum- "marily?"—with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

If upon the hearing of any charge against a young person in respect of any indictable offence specified in the First Schedule hereto, or in respect of any offence punishable on summary conviction, the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss the young person

A.D. 1877.

either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

Summary conviction, with consent of adult.

11. Where a person is charged before a court of summary jurisdiction with any indictable offence specified in the Second Schedule hereto, the court, if it thinks it expedient so to do, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months.

Note.—See Second Schedule.

For the purpose of informing a person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address to such person a question to the following effect: "Do you desire to be tried by a jury, or "do you consent to the case being dealt with summarily?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

If upon the hearing of any charge against a person in respect of an indictable offence specified in the said Second Schedule hereto the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss such person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

This section shall not apply to the case of a child or young person.

Summary conviction on plea of guilty of young person or adult.

12. Where any person is charged before a court of summary jurisdiction with any indictable offence specified in the said First Schedule hereto, and the evidence on the conclusion of the case for the prosecution is, in the opinion of such court, sufficient to put the person charged on his trial for the offence with which he is charged, and the case appear to the court to be one which may properly be dealt with summarily, and may be adequately punished by virtue of the powers of this Act, in any such case as aforesaid the court shall reduce the charge into

Note.—See First Schedule.

writing, and shall read it to the person charged, and shall then ask him whether he is guilty or not of the charge; and if such person says that he is guilty, the court shall thereupon cause a plea of guilty to be entered upon the proceedings, and adjudge him, if a young person, or if the offence be one specified in the Second Schedule hereto, to any punishment which might have been adjudged to him in pursuance of this Act if he had consented to be tried summarily in manner in this Act mentioned; and in any other case may adjudge him to be imprisoned, with or without hard labour, for any term not exceeding *six months*.

The court, before asking, in pursuance of this section, the person charged whether he is guilty or not, shall explain to him that he is not obliged to plead or answer, and that if he do not plead or answer, he will be dealt with in the usual course.

The expenses of the prosecution under this section shall, if the offence be one the expenses of the prosecution of which would otherwise have been payable out of the local rate, be payable in manner in this Act provided in cases where an indictable offence is dealt with summarily in pursuance of this Act.

This section shall not apply to a child.

Trial by jury in case of offences triable summarily.

13. Any person when charged before a court of summary jurisdiction with any offence in respect of the commission of which he is liable on summary conviction to be imprisoned for a term exceeding three months, may, on appearing before the court and before the charge is gone into but not afterwards, claim to be tried by a jury, and thereupon the court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony.

A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be tried by a jury in pursuance of this section, shall address him as follows, or to the like effect: "You are charged with an offence in respect "of the commission of which you are entitled, if you desire it, "to be tried by a jury, do you desire to be tried by a jury, or do "you consent to the case being dealt with summarily?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the

A.D. 1877.

meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

Appeal from summary conviction to general or quarter sessions.

14. Where, in pursuance of this Act, or of any Act of Parliament passed before or after the commencement of this Act, any person is sentenced to imprisonment by a court of summary jurisdiction as a punishment for his offence, or for refusing to do or to abstain from doing any act or thing required to be done or left undone other than the payment of money, and not in respect of the non-payment of a fine or other sum of money, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, he may appeal to a court of general or quarter sessions against such sentence.

Constitution of court of summary jurisdiction when trying offences.

15. A court of summary jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter under this or any other Act of Parliament, or enforcing payment of any money due under any security or recognizance in pursuance of this Act, shall, save as in this section is otherwise provided, and notwithstanding any enactment to the contrary, be a court of summary jurisdiction sitting in session as defined by this Act.

Provided, that—

(1.) Any offence specified in sections three and four of the Vagrant Act, or either of those sections; also

(2.) The offence of being found drunk in any highway or other public place, or in licensed premises;

may, where it appears to the court inconvenient to delay the trial of the case, be heard, tried, determined, and adjudged by a court of summary jurisdiction sitting out of session.

"The Vagrant Act" in this section means the Act of the fifth year of the reign of King George the Fourth, chapter eighty-three, intituled "An Act for the punishment of idle and disorderly persons, "and rogues and vagabonds, in that part of Great Britain called "England."

A court of summary jurisdiction sitting out of session may adjourn the hearing of any case to the next practicable court of summary jurisdiction sitting in session, in the same manner in all respects as a justice is authorised to adjourn the hearing of a case under the sixteenth section of the Summary Jurisdiction Act, 1848.

A.D. 1877.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

16. A court of summary jurisdiction, if it deems it expedient so to do, may postpone the issue of a warrant for committing a person to prison for nonpayment of a sum of money adjudged to be paid by a conviction or order, or for default of distress to satisfy any such sum, or the issue of a warrant of distress, until such time and on such conditions, if any, as to the court may seem just.

The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Where a person is adjudged by the conviction or order of a court of summary jurisdiction to pay a sum or sums of money, on default of payment of which a warrant of distress is authorised to be issued, if it is contended by or on behalf of such person that in the event of a warrant of distress being issued his goods will be insufficient to satisfy the money payable by him, or that the levy of the distress will be more injurious to him or his family than imprisonment, the court, if it is satisfied of the truth of such contention, instead of issuing such warrant of distress, may order the person liable to pay such money, on nonpayment thereof to be imprisoned for any period not exceeding the period for which he is liable to be imprisoned in default of distress to satisfy such money.

Where, on the return of a warrant of distress issued by a court of summary jurisdiction, it appears to the court that the goods and chattels of the defendant, although insufficient to satisfy the whole amount adjudged to be paid by the conviction or order, have, after payment of the costs of the distress, reduced the amount so adjudged to such an extent that the unsatisfied balance, if it had constituted the original amount adjudged to be paid by the conviction or order, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke the term of imprisonment, and command the defendant to be imprisoned for such less maximum term, instead of for the term originally mentioned in the conviction of order.

Supplemental Provisions.

Clause A.

Register to the clerk of court of summary jurisdiction.

17. The clerk of every court of summary jurisdiction shall, on every day on which the court sits in session, enter in a register, to be called the register of summary convictions and orders, a minute

A.D. 1877.

of convictions and orders made by such court on that day, and of such other proceedings taking place on that day as may be directed by any rule made in pursuance of this Act. The register shall contain such matters and be in such form as may be directed by any rule under this Act, and the entries relating to each day shall be signed by some one of the justices forming part of the court of summary jurisdiction on that day where the court is constituted of two or more justices, and in any other case by the justice constituting the court. Any register of summary convictions and orders purporting to be kept in pursuance of this Act, and purporting to be signed in manner directed by this Act, shall, without further proof, when produced, be evidence of the matters therein entered.

A writing purporting to be an extract from or copy of the register of summary convictions and orders of any court of summary jurisdiction, and purporting to be certified as a true extract or copy by the clerk of such court, shall be admissible in evidence in any case in which and to the same extent as the register itself would be admissible in evidence.

The register of summary convictions and orders of any particular court of summary jurisdiction may be distinguished by the addition of such name or names, or by such other description as may be directed by any rule made in pursuance of this Act, and any such name or names or other description shall be judicially noticed.

Regulations as to securitief taken in pursuance of Act.

18. A person shall give security under this Act, whether as principal or surety, by an oral or written acknowledgment of the undertaking or condition by which and of the sum for which he is bound, in such manner and form as may be prescribed by any rule made in pursuance of this Act and for the time being in force.

The payment of any sum by a principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction in manner in which that court is authorised to enforce payment of a fine of like amount.

The payment of any sum payable by a surety on behalf of his principal under a forfeited security given in pursuance of this Act may be enforced by a court of summary jurisdiction as a civil debt due from him in the manner in which civil debts are directed to be enforced by such court under this Act and not otherwise.

Any sum paid by a surety on behalf of his principal in respect of a forfeited security under this Act, together with all costs, charges, and expenses incurred by such surety in respect of his security, shall be deemed a civil debt due to him from the principal,

A.D. 1877.

and may be enforced by a court of summary jurisdiction in manner in which civil debts are directed to be enforced by such court under this Act, and not otherwise.

Power of court of summary jurisdiction to remand.

19. Where a court of summary jurisdiction has cognizance of any indictable offence with which it has or may have, under the circumstances in this Act mentioned, power to deal summarily, such court may, for the purpose of ascertaining whether the case is of such a nature as ought to be dealt with summarily, either before or during the hearing of the case, adjourn the case for any time not exceeding eight clear days. And further, when a court of summary jurisdiction having cognizance of a charge of any such offence as in this section mentioned is not at the time of the charge being brought before it sitting in session, it may, if it thinks the case proper to be dealt with summarily in pursuance of this Act, adjourn the case till the next practicable court of summary jurisdiction sitting in session.

Where any case is adjourned in pursuance of this section, the court adjourning the same may commit the person charged with the offence to prison during the period of such adjournment, or may allow him to be at large on his entering into a recognizance with or without a surety or sureties conditioned for his appearance at the time and place to which the case is adjourned.

Power of court of summary jurisdiction with respect to sureties.

20. Where any person has been committed to prison by a court of summary jurisdiction for default in finding sureties, a court of summary jurisdiction may, of its own motion, or on application made from time to time, inquire into the case of the person so imprisoned; and, having regard to all the circumstances, may, if it thinks it just so to do, reduce the amount for which it is proposed the sureties or surety should be bound, or dispense with the sureties or surety, or otherwise deal with the case as the court thinks just.

Regulations as to indictable offences dealt with summarily.

21. Where any indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily, the procedure shall, until the conclusion of the case for the prosecution, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not indictment:

Provided as follows,—

(1.) The court may make the like order for the restitution of property in any case as might have been made by the

A.D. 1877.

court before which the person convicted would have been tried if he had been tried on indictment; and

(2.) The conviction shall contain a statement as to the consent in the case of a child of his parent or guardian, and in the case of any other person, of such person, to be tried by a court of summary jurisdiction:

(3.) Together with the conviction required to be lodged with the clerk of the peace in pursuance of the Summary Jurisdiction Act, 1848, there shall be transmitted to and filed by such clerk in each case the written charge or written information, and the depositions of the witnesses and the statement, if any, of the accused.

Cost of prosecution of indictable offences dealt with summarily.

22. Where an indictable offence (the expenses of the prosecution of which would otherwise have been payable out of the local rate) is dealt with summarily in pursuance of this Act, the court may, if it thinks fit, grant to the person who preferred the charge, or appeared to prosecute or give evidence, a certificate of the amount of the compensation which the court deems reasonable for his expenses, trouble, and loss of time therein, subject, nevertheless, to such regulations as may be from time to time made with respect to the payment of costs in the case of indictable offences, and the amount named in the certificate may include the fees payable to the clerk of the court of summary jurisdiction, and the fees payable to the clerk of the peace, for filing the conviction, depositions, and other documents required to be filed by him under this Act and such other expenses as are by law payable when incurred before a commitment for trial, and every certificate so granted shall have the effect of an order of Court for the payment of the expenses of a prosecution for felony, made in pursuance of the Act of the seventh year of King George the Fourth, chapter sixty-four, intituled "An "Act for improving the administration of criminal justice in Eng- "land," and the Acts amending the same, and the compensation allowed by such certificate shall be paid in like manner as the costs, specified in such order, would have been paid.

Power of the Lord Chancellor to make rules.

23. The Lord Chancellor of Great Britain may from time to time make, and when made, rescind, alter, and add to, rules in relation to the following matters or any of them; that is to say,

(1.) With respect to giving security under this Act; and

(2.) With respect to the forms to be used under the Summary Jurisdiction Acts or any of them; and

(3.) With respect to the costs and charges payable under distress warrants issued by a court of summary jurisdiction; and

(4.) With respect to any other matter with respect to which rules are authorised or required to be made under this Act.

The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Act, 1848, or any forms relating to summary proceedings contained in any other Act.

Any rule purporting to be made in pursuance of this section shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed.

PART II.

Amendment of Procedure.

Appeal to general or quarter sessions.

24. Where any person is authorised by this Act or any Act of Parliament passed after the commencement of this Act to appeal from the decision of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations following:

(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county or place in which the decision of the court was given, and holden not less than twenty-one days after the day on which such decision was given; and

(2.) The appellant shall, within the prescribed time, or if no time is prescribed within ten days after the day on which decision of the court was given, give notice to the other party and to the clerk of the court of summary jurisdiction of his intention to appeal, and the general grounds of such appeal; and

(3.) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or the appellant may, if the court thinks it expedient,

A.D. 1877.

instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as the court deems sufficient; and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if it thinks fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just; and

(6.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that such conviction or order has been quashed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(7.) Every notice in writing required by this section to be given by an appellant may be signed by him, or by his agent on his behalf, and may be transmitted in a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Summary orders.

25. Where power is given by any Act of Parliament passed after the commencement of this Act to a court of summary jurisdiction of requiring any person to do or abstain from doing any act or thing other than the payment of money, or of requiring any act or thing to be done or left undone other than the payment of money, and no mode is prescribed of enforcing such requisition, the court may exercise such power by an order or orders, and may annex to any such order any conditions as to time or mode of action it may think just, and may suspend or rescind any such order on such undertaking been given or condition being

performed as the court may think just, and generally may make such arrangement for carrying into effect such power as to the court seems meet. A.D. 1877.

Any person making default in complying with any order of a court of summary jurisdiction in relation to any matter other than the payment of money, shall be punished in the prescribed manner, or if no punishment is prescribed, he may in the discretion of the court be ordered to pay a fine not exceeding one pound for every day during which he is in default, or to be imprisoned until he has remedied his default:

Provided that a person shall not, for non-compliance with the requisition of a court of summary jurisdiction, whether made by one or more orders, to do or abstain from doing any act or thing, be liable under this section to imprisonment for a period or periods amounting in the aggregate to more than two months, or to a fine or fines exceeding in the aggregate twenty pounds.

Recovery of civil debts in court of summary jurisdiction.

26. Any sum which by this Act, or by any Act passed after the commencement of this Act, is declared to be a civil debt, and in respect of the recovery of which jurisdiction is given to a court of summary jurisdiction, shall be deemed to be a sum for payment of which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided as follows:

(1.) Such complaint shall be deemed to be a civil and not a criminal proceeding; and

(2.) A warrant shall not be issued for apprehending any person for failing to appear to answer a complaint in any such civil proceeding as aforesaid; and

(3.) An order made by a court of summary jurisdiction for the payment of any such civil debt as aforesaid shall not, in default of distress or otherwise, be enforced by imprisonment, unless it is proved to the satisfaction of the court that the person making default in payment of such civil debt either has or has had since the date of the order the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just, and for the purposes of such proof the person making default and any witnesses may be summoned and examined on oath according to the rules for the time being in force in relation to the summoning and examination of

A.D. 1877.

witnesses, and made in pursuance of the Employers and Workmen Act, 1875.

Pleadings and forfeitures.

27. The following enactments shall apply to offences triable by courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law; and
2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating the offence may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and
3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same; and
4. All forfeitures incurred in respect of any offence triable by a court of summary jurisdiction may be sold or disposed of in such manner as the court having cognizance of the case in which the forfeiture is incurred may direct, and the proceeds of such sale shall be applied in the like manner as fines.

Case from quarter sessions without certiorari.

28. A writ of certiorari or other writ shall not be required for the removal of any conviction, order, or other determination in relation to which a special case is stated by any court of general or quarter sessions for obtaining the judgment or determination of a superior court.

Proof by affidavit of service of process.

29. In any proceeding within the jurisdiction of a court of summary jurisdiction, service on any person of any summons, notice, or other process or document required or authorised to be served may be proved by affidavit purporting to be sworn before any justice of the peace, or any commissioner to administer oaths in the Supreme Court of Judicature, or any clerk of the peace or any registrar of a county court, and any such affidavit shall, until the contrary be shown, be taken to be sufficient proof of the statements contained therein, and shall be received in evidence in any court of summary jurisdiction, or in any other court of justice, or in any legal proceeding, without proof of the signatures or of the official character of the person or persons taking or signing the same, and the fee for taking

such affidavit shall be such sum, not exceeding one shilling, as may be directed by rules made in pursuance of this Act, and any such fee shall be costs in the matter or proceeding to which it relates.

Recognizances taken out of court.

30. When a court of summary jurisdiction has fixed, as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance need not be entered into before the court, but may, subject to any rules made in pursuance of this Act, be entered into by the parties in the presence of any clerk of a court of summary jurisdiction or any superior officer or inspector of the police; and thereupon all the consequences of law shall apply as if the recognizance had been entered into as heretofore by law required.

Procedure on the execution of distress warrants.

31. The following regulations shall be enacted with respect to warrants of distress issued by or in pursuance of a conviction or order of a court of summary jurisdiction:

(1.) A warrant of distress shall be executed by or under the direction of a constable; and

(2.) A distress shall be sold by public auction (unless the owner of the goods consents in writing to its being sold by private contract, in which case such sale may be made accordingly), and in the case of a public auction, five clear days at the least shall intervene between the making of the distress and the sale, but subject as aforesaid, the distress shall be sold within the period fixed by the warrant, and if no period is so fixed then within the period of fourteen days from the date of the warrant, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid; and

(3.) Subject to any directions to the contrary which may be given by the warrant authorising the distress, the goods shall not be removed from the house of the person against whom the distress is levied until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by placing on or affixing to each article a conspicuous mark, and any person removing any goods so impounded, on or to which such mark is placed or affixed, or defacing or removing the mark so placed or affixed, shall on summary conviction be liable to a fine not exceeding five pounds; and

A.D. 1877.

(4.) Where any person charged with the execution of a warrant of distress retains from the produce of any goods sold to satisfy the distress, or otherwise exacts any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five pounds; and

(5.) A written account of the costs and charges incurred by a constable in respect of the execution of any warrant of distress, shall be sent by him as soon as practicable to the clerk of the court of summary jurisdiction by which the warrant was issued; and it shall be lawful for the person upon whose goods the distress was levied, within one month after the levy of the distress, to inspect such account at any reasonable time to be appointed by the court, and to take a copy of such account; and

(6.) A constable charged with the execution of a warrant of distress may himself sell the distress by auction without procuring any license to act as an auctioneer, or he may cause the same to be sold by some auctioneer duly licensed, and may deduct out of the amount realised by such sale all costs or charges actually incurred in effecting such sale; and

(7.) Where any person against whom a warrant of distress is issued pays or tenders to the constable having the execution of the same the sum mentioned in such warrant, or produces the receipt of the clerk of a court of summary jurisdiction for the same, and also pays the amount of the expenses of such distress up to the time of such payment or tender, the constable shall not execute the warrant; and

(8.) The constable who sells or causes to be sold any distress shall render to the owner the overplus, if any, after retaining the amount of the sums and charges allowed.

Return of property by order of Court.

32. Where any property has been taken from any person charged with any offence before a court of summary jurisdiction, a statement shall be made to the court of summary jurisdiction before whom such person is brought of the fact of such property having been taken from the person charged, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and the safety of the

person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct. A.D. 1877.

PART III.

Definitions, Savings, and Repeal of Acts.

Special Definitions.

Special definitions for purposes of the Act.

33. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

"Child" means a person who in the opinion of the court before which he is brought is under the age of twelve years:

"Young person" means a person who in the opinion of the court before which he is brought is of the age of twelve years and under the age of sixteen years:

"Person" includes a child and young person:

"Parent or guardian," in relation to a child, includes any person who, in the opinion of the court having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such child:

"Prescribed" means prescribed or provided by any Act which relates to any offences, penalties, fines, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

"Fine" includes any pecuniary forfeiture or pecuniary compensation payable under a conviction:

"A sum adjudged to be paid by a conviction or order" includes any sum in respect of which a court of summary jurisdiction can issue a warrant of distress, and the amount of such last-mentioned sum shall be deemed to have been ascertained by a conviction or order:

"Local rate" means as respects any county, borough, or place any county rate, borough rate, or other local rate, out of which the costs of the prosecution of any felony committed within such county, borough, or place are payable.

General Definitions.

General definitions applicable to Acts in general.

34. In this Act and any Act of Parliament passed after the commencement of this Act, if not inconsistent with the context,

A.D. 1877.

the following expressions shall have the meanings herein-after respectively assigned to them; that is to say,

"The Summary Jurisdiction Act, 1848," means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to "facilitate the performance of the duties of justices of the "peace out of sessions, within England and Wales, with "respect to summary convictions and orders:"

"The Summary Jurisdiction Acts" or "The Summary Jurisdiction (English) Acts" means the Summary Jurisdiction Act, 1848, and any Acts (including this Act) passed or to be passed amending the Summary Jurisdiction Act, 1848:

"Court of summary jurisdiction" means—

Any justice or justices of the peace or other magistrate, by whatever name called, to whom jurisdiction is given by or who is or are authorised to act under the Summary Jurisdiction Acts or any of such Acts:

A court of summary jurisdiction shall be deemed to be sitting in session—

When such court is constituted either of two or more justices of the peace sitting at some court or other public place at which justices are for the time being accustomed to assemble for holding special or petty sessions, or of some magistrate or officer sitting alone or with others at some police or open court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace:

A court of summary jurisdiction shall be deemed to be sitting out of session—

When it is constituted of a justice or justices of the peace or other magistrate or magistrates sitting in such manner or at such place or otherwise so constituted as not to be within the description of a court of summary jurisdiction sitting in session.

Application of Acts.

Summary Jurisdiction Acts, how applied to other Acts.

35. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any Act of Parliament passed after the commencement of this Act; that is to say,

(1.) Where in any Act passed after the commencement of this Act, any offence is directed or authorised to be prosecuted

summarily, or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence or fine is to be prosecuted or recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(2.) Where in any Act passed after the commencement of this Act any sum of money is directed or authorised to be recovered summarily, or on complaint made to a court of summary jurisdiction, or in a summary manner, or any other words are used implying that such sum of money is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(3.) Where in any Act passed after the commencement of this Act a court of summary jurisdiction is authorised to require any person to do or abstain from doing any act or thing other than the payment of a sum of money; or where any act or thing other than the payment of a sum of money is required or authorised to be done by an order of a court of summary jurisdiction, or is declared capable of being enforced summarily, or by summary order; or where any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly.

Savings, and Construction.

36. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, and in the case of imprisonment, to impose a fine in lieu of imprisonment, shall not apply to any proceedings taken under any Act for punishing mutiny and desertion, or under any Act relating to the militia.

Saving for Army and Militia Acts. See 38 & 39 Vict. c. 69. s. 87.

37. This Act shall not nor shall any repeal thereunder apply to any information, complaint, or other proceeding, or any sums recovered under or by virtue of any of the statutes relating to any of Her Majesty's revenues under the control of the Commissioners of Inland Revenue or the Commissioners of Customs.

Exceptions from Act.

A.D. 1877.

Construction of Act.

38. This Act shall be construed as one with the Summary Jurisdiction Act, 1848, so far as is consistent with the tenour of such Acts respectively.

Repeal.

Repeal of Acts.

39. There shall be repealed as from the commencement of this Act—

(1.) The Acts mentioned in the Third Schedule to this Act to the extent in the third column of that schedule mentioned; and

(2.) So much of any other Act as is inconsistent with this Act.

Note.—See Third Schedule Act.

Provided, that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired or any liability incurred before the commencement of this Act under any enactment hereby repealed; or

(3.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment hereby repealed; or

(4.) The institution or prosecution to its termination of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, fine, forfeiture, or punishment as aforesaid.

Where any unrepealed Act of Parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

1. Simple larceny.
2. Offences declared to be punishable as simple larceny.
3. Larceny from or stealing from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six, or in either of such sections.
7. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid.
8. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny.
9. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person.
10. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.
11. The offences, or any of them, in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England "and Ireland relating to offences against the person."
12. The offences, or any of them, relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the "statute law of England and Ireland relating to malicious injuries "to property."

SECOND SCHEDULE.

1. Simple larceny where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

2. Larceny from or stealing from the person where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

3. Larceny as a clerk or servant where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

4. Embezzlement by a clerk or servant where the value of the whole of the property embezzled does not in the opinion of the court before which the charge is brought exceed forty shillings.

5. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid, where the value of the whole of the property alleged to have been obtained under false pretences does not in the opinion of the court before which the charge is brought exceed forty shillings.

6. Aiding, abetting, counselling, or procuring the commission of simple larceny.

7. Attempt to commit simple larceny.

8. Attempt to commit larceny from or steal from the person.

9. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.

THIRD SCHEDULE.

Session and Chapter.	Title or Abbreviated Title.	Extent of Repeal.
10 & 11 Vict. c. 82 -	An Act for the more speedy trial and punishment of juvenile offenders.	The whole Act.
13 & 14 Vict. c. 37 -	An Act for the further extension of summary jurisdiction in cases of Larceny.	The whole Act, in so far as relates to England.
18 & 19 Vict. c. 126 -	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as relates to England, except sections eighteen, twenty, twenty-two, twenty-three, and twenty-four.
27 & 28 Vict. c. 80 -	An Act to extend the provisions of the Criminal Justice Act, 1855, to the Liberties of the Cinque Ports, and to the district of Romney Marsh in the county of Kent.	The whole Act.
27 & 28 Vict. c. 110 -	An Act for the amendment of the law relating to the mitigation of penalties.	The whole Act.
28 & 29 Vict. c. 127 -	An Act to amend the law relating to small penalties.	The whole Act.
31 & 32 Vict. c. 116 -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as relates to England.
34 & 35 Vict. c. 78 -	An Act to amend the law respecting the Inspection and Regulation of Railways.	Section thirteen, in so far as relates to England.

Summary Jurisdiction Amendment.

A

B I L L

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT]

To amend and facilitate the application of the Law relating to Courts of Summary Jurisdiction.

(*Prepared and brought in by Mr. Secretary Cross, Mr. Solicitor General, and Sir Henry Selwin-Ibbetson.*)

Ordered, by The House of Commons, *to be Printed,* 8 *August* 1877.

[Bill 278.]

Under 4 *oz.*

A

B I L L

TO

Amend the Law relating to Cases of Summary Jurisdiction in Ireland, and the Punishment of Offenders under the Prevention of Crimes Act, 1871. A.D. 1877.

WHEREAS it is expedient that in all cases of summary jurisdiction there should be one uniform course of procedure upon appeal, and that the time within which the notice of intention to appeal may be given, or the application made to state a case for the opinion of one of the superior courts of law should be extended to seven days, and that the operation of the twelfth section of the Prevention of Crimes Act, 1871, should be limited:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Procedure in cases of appeal.

1. *From and after the commencement of this Act* there shall be one uniform course of procedure upon appeal in all cases of summary jurisdiction, and every such appeal shall be subject to and regulated by the provisions contained in the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851: Provided always, that the time within which the appellant may serve notice of his intention to appeal shall be *seven clear days* from the date of the order against which the appeal shall be made.

Amendment of 20 & 21 Vict. c. 43. s. 2.

2. The second section of the Act passed in the twentieth and twenty-first years of the reign of Her Majesty (20 & 21 Vict. c. 43.) intituled, "An Act to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace," shall be amended by substituting for the words "three days" wherever the same occur in such section the words "*seven clear days.*"

[Bill 127.]

A.D. 1877.

3. The operation of the twelfth section of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112.) so far as relates to dealing summarily with offences within said section shall be limited to cases where the offender has been previously convicted of an assault on any constable when in the execution of his duty, or of any other assault for which he was sentenced to a term of imprisonment exceeding *two months*.

Extent of Act.

4. This Act shall extend only to Ireland, and shall commence and take effect from and after the *first day of November one thousand eight hundred and seventy-seven*.

Summary Jurisdiction (Ireland).

A

B I L L

To amend the Law relating to Cases of Summary Jurisdiction in Ireland, and the Punishment of Offenders under the Prevention of Crimes Act, 1871.

(*Prepared and brought in by Mr. Callan, Mr. Downing, Mr. Patrick Martin, and Mr. O'Shaughnessy.*)

Ordered, by The House of Commons, *to be Printed*, 9 *April* 1877.

[Bill 127.]

Under 1 *oz.*

Summary Jurisdiction (Ireland) Amendment Bill (No. 2).

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title of Act.
2. Extent and commencement of Act.
3. Mitigation of punishment by court.
4. Scale of imprisonment for nonpayment of money.
5. Costs to be included in small fines.
6. Summary conviction as respects children.
7. Summary conviction with consent as respects young persons.
8. Summary conviction with consent as respects adults.
9. Appeals from summary orders.
10. Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.
11. Power of the Lord Chancellor to make rules.
12. Costs in certain cases.
13. Pleadings and forfeitures.
14. Return of property by order of court.
15. Special definitions for purposes of the Act.
16. Saving for Army and Militia Acts.
17. Exceptions from Act.
18. Repeal of Acts.

SCHEDULES.

[Bill 159.] A

A

B I L L

TO

Amend the Law relating to Courts of Summary Jurisdiction in Ireland. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as The Summary Jurisdiction (Ireland) Act, 1877.

Extent and commencement of Act.

2. This Act shall extend to Ireland only, and shall come into operation on the *first day of January one thousand eight hundred and seventy-eight.*

Mitigation of punishment by court.

3. Where a court of summary jurisdiction has authority under any Act of Parliament to adjudge any person to be imprisoned for any cause, or to pay a fine, the court may, notwithstanding any enactment to the contrary, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof.

Scale of imprisonment for nonpayment of money.

4. The period of imprisonment to be imposed by a court of summary jurisdiction in respect of the nonpayment of any sum or sums of money adjudged to be paid by a conviction or order of such court, and the amount of which is ascertained by such conviction or order, or in respect of the default of a distress to satisfy any such sum or sums, shall, notwithstanding any enactment to the contrary, be regulated by the following scale; that is to say,

A.D. 1877.

Where the sum or sums of money adjudged to be paid, and the amount of which is ascertained by the conviction or order	The period of imprisonment to be adjudged in respect of the nonpayment of such sum or sums, or of the default of a distress to satisfy such sum or sums, shall not exceed
Does not or do not exceed *ten shillings* -	*Seven days.*
Exceeds or exceed *ten shillings* but does not or do not exceed *one pound* - -	*Fourteen days.*
Exceeds or exceed *one pound* but does not or do not exceed *five pounds* - -	*One month.*
Exceeds or exceed *five pounds* but does not or do not exceed *twenty pounds* - -	*Two months.*
Exceeds or exceed *twenty pounds* - -	*Three months.*

Costs to be included in small fines.

5. Where a fine imposed on any person on his conviction for any offence by a court of summary jurisdiction does not exceed *five shillings*, then, unless the court for special reasons thinks fit to order otherwise, such fine shall be deemed to include costs, and an order shall not be made for payment by the defendant to the informant of any costs; and the court may direct all fees payable or paid by the informant to be remitted or repaid to him, and order the fine or any part thereof to be paid to the informant in or towards the payment of his costs; and a warrant of distress shall not be issued in respect of any such fine, but the payment of such fine may be enforced by imprisonment.

Summary conviction as respects children.

6. Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, and in the opinion of such court the child is of sufficient age and capacity to commit crime, the court, if it thinks it expedient so to do, and subject to such provision as is in this section mentioned with respect to the consent to be given by the parent or guardian of the child so charged, may, instead of committing the child for trial, deal summarily with the offence, and adjudge such child, if found guilty of the offence, to be imprisoned, without hard labour, for any term not exceeding *one month*, and in any such case the court, if upon the hearing of the charge it thinks it inexpedient to inflict any punishment, may, without proceeding to a conviction, dismiss the charge against the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

The parent or guardian of a child charged with any such offence as is in this section mentioned shall, if it be known to the court that he is present, be informed by the court of his right to have

the child tried by a jury; and if such parent or guardian, on being so informed, withhold his consent from the offence being dealt with summarily, the court shall deal with the same as if it were an offence punishable on indictment; but if the parent or guardian is not known to the court to be present, or if he consent to the case being dealt with summarily, the court may, if it think it expedient so to do, deal with the same accordingly.

For the purpose of informing the parent or guardian of his right under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, "or do you consent to the case being dealt with summarily?"— with an explanation, if the court think such explanation desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the child will stand committed if his case is tried by a jury.

Where the parent or guardian is not present in court, the court may, if it thinks it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian with a view so far as is practicable of securing his attendance in court.

A child shall not, on summary conviction for an offence under this Act or any other Act of Parliament, be imprisoned for any longer term than *one month*.

If upon the hearing of any charge against a child in respect of any offence punishable on summary conviction the court of summary jurisdiction thinks it inexpedient to inflict any punishment, it may, without proceeding to a conviction, dismiss the charge against the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

te.—See st Schee.

Summary conviction with consent as respects young persons.

7. Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule hereto, the court, if it thinks it expedient so to do, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may, instead of committing the young person for trial, deal summarily with the offence, and in its discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding *three pounds*, or to be imprisoned, with or without hard labour, for any term not exceeding *three months*.

A.D. 1877.

For the purpose of informing a young person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such young person to the following effect: "Do you desire to be tried "by a jury, or do you consent to the case being dealt with sum- "marily?"—with an explanation, if the court think such explanation desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the young person will stand committed if his case is tried by a jury.

If upon the hearing of any charge against a young person in respect of any indictable offence specified in the First Schedule hereto, or in respect of any offence punishable on summary conviction, the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may, without proceeding to a conviction, dismiss the charge against the young person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

A young person shall not be tried summarily under this section where it appears to the court that the offence in respect of which it is called upon to exercise jurisdiction under this section is one which, owing to a previous conviction of the young person charged, is punishable by law with penal servitude.

Nothing contained in this Act shall be taken to alter or affect the powers conferred upon justices by the second sub-section of the sixth section of the Act passed in the session of Parliament held in the fourteenth and fifteenth years of the reign of Her present Majesty, chapter ninety-two, or by any other Act regulating such powers, or amending or affecting the said sub-section.

Summary conviction with consent as respects adults.

8. Where a person is charged before a court of summary jurisdiction with any indictable offence specified in the Second Schedule hereto, the court, if it thinks it expedient so to do, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may, instead of committing the person for trial, deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding *three months*.

Note.—See Second Schedule.

For the purpose of informing a person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address to such person a question

to the following effect: "Do you desire to be tried by a jury, or "do you consent to the case being dealt with summarily?"—with an explanation, if the court think such explanation desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) to which the person will stand committed if his case is tried by a jury.

A court of summary jurisdiction, if upon the hearing of any charge against a person in respect of an indictable offence specified in the said Second Schedule hereto it think it inexpedient to inflict any punishment, may, without proceeding to a conviction, dismiss the charge against such person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

This section shall not apply to the case of a child or young person, and shall not apply to a case where it appears to the court that the offence in respect of which it is called upon to exercise jurisdiction under this section is one which, owing to a previous conviction of the person charged, is punishable by law with penal servitude.

Appeals from summary orders.

9. Whenever under any Act of Parliament now in force or hereafter to be passed an order shall be made by a court of summary jurisdiction for payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for the doing of anything at a greater expense than twenty shillings, or for the estreating of any recognizance to a greater amount than twenty shillings, either party (whether he shall be complainant or defendant) in cases of a civil nature, or the party against whom the order shall have been made in other cases, shall be entitled to appeal against such order; and every such appeal, from and after the commencement of this Act, shall be subject to and regulated by the provisions contained in the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851, as the same are or shall be amended by any other Act, anything in any Act or Acts to the contrary notwithstanding: Provided always, that the time within which the appellant may serve notice of his intention to appeal shall be seven clear days from the date of the order against which the appeal shall be made instead of three days as provided by the said section: Provided also, that nothing in this section shall extend to the police district of Dublin Metropolis nor to any appeals brought under the provisions of the Act passed in the session of Parliament held in the twenty-second year of the reign of Her present Majesty, chapter fourteen.

A.D. 1877.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

10. The wearing apparel and bedding of a person and his family, and, to the value of *five pounds*, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Where, on the return of a warrant of distress issued by a court of summary jurisdiction, it appears to the court that the goods and chattels of the defendant, although insufficient to satisfy the whole amount adjudged to be paid by the conviction or order, have reduced the amount so adjudged to such an extent that the unsatisfied balance, if it had constituted the original amount in respect of which the conviction or order was made, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke so much of the conviction or order as imposes the term of imprisonment, and shall command the defendant to be imprisoned for such less maximum term, instead of for the term originally mentioned in the conviction or order.

Power of the Lord Chancellor to make rules.

11. The Lord Chancellor of Ireland may from time to time make, and when made, rescind, alter, and add to rules in relation to the following matters or any of them; that is to say,

(1.) With respect to the forms to be used under the Summary Jurisdiction Acts or any of them;

(2.) With respect to the costs and charges payable in any proceeding connected with summary jurisdiction; and

(3.) With respect to any other matter with respect to which rules are authorised or required to be made under this Act.

The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Acts in force in Ireland, or any forms relating to summary proceedings contained in any other Act now in force or hereafter to be passed.

Any rule purporting to be made in pursuance of this section shall be presumed to be within the powers of this Act, and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed, and shall be of the same validity as if it had been enacted by Parliament.

Costs in certain cases.

12. Costs shall be in the discretion of the chairman of the quarter sessions of the county in every case in which the relief granted by him might, if sought for in the manner and within the

time prescribed by any statute or statutes in that behalf, have been obtained by an order of a court of summary jurisdiction.

Pleadings and forfeitures.

13. The following enactments shall apply to offences triable by courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law; and

2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating the offence may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and

3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same; and

4. All forfeitures incurred in respect of any offence triable by a court of summary jurisdiction may be sold or disposed of in such manner as the court having cognizance of the case in which the forfeiture is incurred may direct, and the proceeds of such sale shall be applied in the like manner as fines.

Return of property by order of court.

14. Where any property has been taken from any person charged with any offence before a court of summary jurisdiction, a statement shall be made to the court of summary jurisdiction before whom such person is brought of the fact of such property having been taken from the person charged, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and the safety of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

Special definitions for purposes of the Act.

15. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

"Child" means a person who in the opinion of the court before which he is brought is under the age of *twelve years*:

A.D. 1877.

"Young person" means a person who in the opinion of the court before which he is brought is of the age of *twelve years* and under the age of *sixteen years*:

"Prescribed" means prescribed or provided by any Act, passed before or after the commencement of this Act, which relates to any offences, penalties, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

"Fine" includes any pecuniary forfeiture or pecuniary compensation payable under a conviction:

"A sum adjudged to be paid by a conviction or order" includes any sum in respect of which a court of summary jurisdiction can issue a warrant of distress:

"Summary Jurisdiction Acts," when used in reference to any matter or proceeding in the police district of Dublin metropolis, means the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and when used with reference to any matter or proceeding elsewhere in Ireland, means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

"Court of summary jurisdiction" means any court having jurisdiction under the Summary Jurisdiction Acts.

Savings, and Construction.

Saving for Army and Militia Acts. See 38 & 39 Vict. c. 69. s. 87.

16. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, shall not apply to any proceedings taken under any Act for punishing mutiny and desertion, or under any Act relating to the militia.

Exceptions from Act.

17. This Act shall not, nor shall any repeal thereunder, apply to any information, complaint, or other proceeding under or by virtue of any of the statutes relating to any of Her Majesty's revenues under the control of the Commissioners of Inland Revenue or the Commissioners of Customs.

Repeal.

Note.—See Third Schedule to Act.

Repeal of Acts.

18. There shall be repealed as from the commencement of this Act—

(1.) The Acts mentioned in the Third Schedule to this Act to the extent in the third column of that schedule mentioned; and

(2.) So much of any other Act as is inconsistent with this Act.

Provided, that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired, or any liability incurred, under any enactment hereby repealed;

(3.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment hereby repealed;

(4.) The institution or prosecution to its termination of any investigation or legal proceeding, or any other remedy for ascertaining, enforcing, or recovering any such liability, fine, forfeiture, or punishment as aforesaid.

Where any unrepealed Act of Parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

A.D. 1877.

SCHEDULES.

FIRST SCHEDULE.

1. Simple larceny.
2. Offences declared to be punishable as simple larceny.
3. Larceny from or stealing from the person.
4. Larceny as a clerk or servant.
5. Embezzlement by a clerk or servant.
6. Receiving stolen goods.
7. Obtaining money under false pretences.
8. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny.
9. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person.
10. Attempt to obtain money under false pretences.
11. The offences, or any of them, in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England "and Ireland relating to offences against the person."
12. The offences, or any of them, relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the "statute law of England and Ireland relating to malicious injuries "to property."

SECOND SCHEDULE.

1. Simple larceny where the whole of the value of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

2. Larceny from or stealing from the person where the whole of the value of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

3. Larceny as a clerk or servant where the whole of the value of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

4. Embezzlement by a clerk or servant where the whole of the value of the property alleged to have been embezzled does not in the opinion of the court before which the charge is brought exceed forty shillings.

5. Obtaining money under false pretences where the whole of the value of the property alleged to have been obtained under false pretences does not in the opinion of the court before which the charge is brought exceed forty shillings.

6. Aiding, abetting, counselling, or procuring the commission of simple larceny.

7. Attempt to commit simple larceny.

8. Attempt to commit larceny or to steal from the person.

9. Attempt to obtain money under false pretences.

THIRD SCHEDULE.

Session and Chapter.	Title or Abbreviated Title.	Extent of Repeal.
18 & 19 Vict. c. 82. -	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as it relates to Ireland, except sections twenty-two, twenty-three, and twenty-four.
31 & 32 Vict. c. 116. -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as it relates to Ireland.
36 & 37 Vict. c. 82. -	An Act to amend the law relating to Small Penalties in Ireland.	The whole Act.

Summary Jurisdiction (Ireland) Amendment (No. 2).

A

B I L L

To amend the Law relating to Courts of Summary Jurisdiction in Ireland.

(*Prepared and brought in by Sir Colman O'Loghlen and Mr. Errington.*)

Ordered, by The House of Commons, *to be Printed*, 8 *May* 1877.

[Bill 159.]

Under 2 *oz.*

Summary Jurisdiction (Ireland) Amendment Bill (No. 2).

[AS AMENDED IN COMMITTEE.]

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title of Act.
2. Extent and commencement of Act.
3. Mitigation of punishment by court.
4. Scale of imprisonment for nonpayment of money.
5. Costs to be included in small fines.
6. Summary conviction as respects children.
7. Summary conviction with consent as respects young persons.
8. Summary conviction with consent as respects adults.
9. Appeals from summary orders.
10. Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.
11. Power of the Lord Chancellor to make rules.
12. Costs in certain cases.
13. Pleadings and forfeitures.
14. Regulations as to indictable offences dealt with summarily.
15. Return of property by order of court.
16. Special definitions for purposes of the Act.
17. Summary Jurisdiction Acts how applied to other Acts.
18. Saving for Army and Militia Acts.
19. Exceptions from Act.
20. Repeal of Acts.

SCHEDULES.

A

B I L L

[AS AMENDED IN COMMITTEE]

TO

Amend the Law relating to Courts of Summary Jurisdiction in Ireland. A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title of Act.

1. This Act may be cited for all purposes as The Summary Jurisdiction (Ireland) Act, 1877.

Extent and commencement of Act.

2. This Act shall extend to Ireland only, and shall come into operation on the first day of January one thousand eight hundred and seventy-eight.

Mitigation of punishment by court.

3. Where a court of summary jurisdiction has authority to adjudge any person to be imprisoned, or to adjudge any person to pay a fine, the court may, notwithstanding any enactment to the contrary, in the case of imprisonment, impose the same without hard labour, and reduce the prescribed period thereof, or do either of such acts ; and in the case of a fine, if it be imposed as in respect of a first offence, may reduce the prescribed amount thereof : And where the punishment directed by this or any other Act of Parliament to be inflicted in respect of any offence punishable on summary conviction, and not being by law a felony, is imprisonment, and no option of a fine is given, a court of summary jurisdiction may, notwithstanding, if the court thinks the justice of the case will be better met by a fine than by imprisonment, impose a fine not exceeding ten pounds.

Scale of imprisonment for nonpayment of money.

4. The period of imprisonment to be imposed by a court of summary jurisdiction in respect of the nonpayment of any sum or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by such conviction or

A.D. 1877.

order, or in respect of the default of a distress to satisfy any such sum or sums, shall, notwithstanding any enactment to the contrary, be regulated by the following scale; that is to say,

Where the sum or sums of money adjudged to be paid by a conviction or order, and the amount of which is ascertained by the conviction or order	The period of imprisonment to be adjudged in respect of the non-payment of such sum or sums, or of the default of a distress to satisfy such sum or sums, shall not exceed
Does not or do not exceed ten shillings	Seven days.
Exceeds or exceed ten shillings but does not or do not exceed one pound	Fourteen days.
Exceeds or exceed one pound but does not or do not exceed five pounds	One month.
Exceeds or exceed five pounds but does not or do not exceed twenty pounds	Two months.
Exceeds or exceed twenty pounds	Three months.

Costs to be included in small fines.

5. Where a fine imposed on any person on his conviction for any offence by a court of summary jurisdiction does not exceed five shillings, then, unless the court for special reasons thinks fit to order otherwise, such fine shall be deemed to include costs, and an order shall not be made for payment by the defendant to the informant of any costs; and the court shall, unless it thinks fit for special reasons to order otherwise, direct all fees payable or paid by the informant to be remitted or repaid to him; the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Summary conviction with consent of parent or guardian of children.

6. Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if it thinks it expedient so to do, and if the parent or guardian of the child so charged when informed by the court of his right to have the child tried by a jury consents to his being tried summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment: Provided as follows:

(1.) That a sentence of penal servitude shall not be passed, but imprisonment be substituted therefor; and

(2.) That in the case of imprisonment, the term awarded shall not in any case exceed one month; and

(3.) That in the case of a fine, the amount awarded shall not in any case exceed forty shillings.

For the purpose of informing the parent or guardian of his right to have the child tried by a jury in the case of an indictable offence,

the court of summary jurisdiction shall, at the conclusion of the case for the prosecution, address a question to such parent or guardian to the following effect: "Do you desire the child to be "tried by a jury, or do you consent to the case being dealt with "summarily?" with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

Where the parent or guardian is not present when a child is charged with an indictable offence before a court of summary jurisdiction, the court may, if it thinks it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian with a view so far as is practicable of securing his attendance in court, or the court may deal with the offence as an indictable offence.

This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is tried, of sufficient age and capacity to commit crime.

If upon the hearing of any charge against a child in respect of any offence triable under this section or otherwise punishable on summary conviction the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss the child either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

A child shall not, on summary conviction for any offence under this Act or any other Act of Parliament, be imprisoned for a longer period than one month, or be fined a larger sum than forty shillings.

This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

Summary conviction with consent of young persons.

7. Where a young person is charged before a court of summary jurisdiction with any indictable offence specified in the First Schedule hereto, the court, if it thinks it expedient so to do, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and in its discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding three pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months.

For the purpose of informing a young person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address a question to such young person to the following effect: "Do you desire to be tried

A.D. 1877.

" by a jury, or do you consent to the case being dealt with sum-
" marily ? "—with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

If upon the hearing of any charge against a young person in respect of any indictable offence specified in the First Schedule hereto, or in respect of any offence punishable on summary conviction, the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss the young person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

Nothing contained in this Act shall be taken to alter or affect the powers conferred upon justices by the second sub-section of the sixth section of the Act passed in the session of Parliament held in the fourteenth and fifteenth years of the reign of Her present Majesty, chapter ninety-two, or by any other Act regulating such powers, or amending or affecting the said sub-section.

Summary conviction with consent of adult.

8. Where a person is charged before a court of summary jurisdiction with any indictable offence specified in the Second Schedule hereto, the court, if it thinks it expedient so to do, and if the person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and adjudge such person, if found guilty of the offence, to be imprisoned, with or without hard labour, for any term not exceeding three months.

For the purpose of informing a person of his right to be tried by a jury under this section, the court shall, at the conclusion of the case for the prosecution, address to such person a question to the following effect: " Do you desire to be tried by a jury, or " do you consent to the case being dealt with summarily ?"—with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the trial will be held if the case is tried by a jury.

If upon the hearing of any charge against a person in respect of an indictable offence specified in the said Second Schedule hereto the court of summary jurisdiction thinks it inexpedient to inflict any punishment, that court may dismiss such person either unconditionally or conditionally on his finding a surety or sureties for good behaviour.

This section shall not apply to the case of a child or young person.

Appeals from summary orders.

9. Whenever under any Act of Parliament now in force or hereafter to be passed an order shall be made by a court of summary jurisdiction for payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for the doing of anything at a greater expense than twenty shillings, or for the estreating of any recognizance to a greater amount than twenty shillings, either party (whether he shall be complainant or defendant) in cases of a civil nature, or the party against whom the order shall have been made in other cases, shall be entitled to appeal against such order; and every such appeal, from and after the commencement of this Act, shall be subject to and regulated by the provisions contained in the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851, as the same are or shall be amended by any other Act, anything in any Act or Acts to the contrary notwithstanding: Provided always, that the time within which the appellant may serve notice of his intention to appeal shall be seven clear days from the date of the order against which the appeal shall be made instead of three days as provided by the said section: Provided also, that nothing in this section shall extend to the police district of Dublin Metropolis nor to any appeals brought under the provisions of the Act passed in the session of Parliament held in the twenty-second year of the reign of Her present Majesty, chapter fourteen.

Special provisions as to warrants of commitment for nonpayment of sums of money, and as to warrants of distress.

10. The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued by a court of summary jurisdiction.

Where, on the return of a warrant of distress issued by a court of summary jurisdiction, it appears to the court that the goods and chattels of the defendant, although insufficient to satisfy the whole amount adjudged to be paid by the conviction or order, have reduced the amount so adjudged to such an extent that the unsatisfied balance, if it had constituted the original amount in respect of which the conviction or order was made, would have subjected the defendant to a maximum term of imprisonment less than the term of imprisonment to which he is liable under such conviction or order, the court shall, by its warrant of commitment, revoke so much of the conviction or order as imposes the term of imprisonment, and shall command the defendant to be

A.D. 1877.

imprisoned for such less maximum term, instead of for the term originally mentioned in the conviction or order.

Power of the Lord Chancellor to make rules.

11. The Lord Chancellor of Ireland may from time to time make, and when made, rescind, alter, and add to, rules in relation to the following matters, or any of them; that is to say,

(1.) With respect to the forms to be used under the Summary Jurisdiction Acts, or any of them;

(2.) With respect to the costs and charges payable in any proceeding connected with summary jurisdiction; and

(3.) With respect to any other matter with respect to which rules are authorised or required to be made under this Act.

The Lord Chancellor may, in the exercise of the power given him by this section, annul, alter, or add to any forms contained in the Summary Jurisdiction Acts in force in Ireland, or any forms relating to summary proceedings contained in any other Act now in force or hereafter to be passed.

Any rule purporting to be made in pursuance of this section shall be presumed to be within the powers of this Act, and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not then sitting, within one month after the commencement of the then next session of Parliament, and shall be judicially noticed, and shall be of the same validity as if it had been enacted by Parliament.

Costs in certain cases.

12. Costs shall be in the discretion of the Chairman of the Quarter Sessions of the county in every case in which the relief granted by him might, if sought for in the manner and within the time prescribed by any statute or statutes in that behalf, have been obtained by an order of a court of summary jurisdiction.

Pleadings and forfeitures.

13. The following enactments shall apply to offences triable by courts of summary jurisdiction; (that is to say,)

1. The description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law; and

2. Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating the offence, may be proved by the defendant, but need not be specified or negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant; and

3. A warrant of commitment shall not be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same; and

4. All forfeitures incurred in respect of any offence triable by a court of summary jurisdiction may be sold or disposed of in such manner as the court having cognizance of the case in which the forfeiture is incurred may direct, and the proceeds of such sale shall be applied in the like manner as fines.

Regulations as to indictable offences dealt with summarily.

14. Where any indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily, the procedure shall, until the conclusion of the case for the prosecution, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assumes the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment:

Provided as follows,—

(1.) The court may make the like order for the restitution of property in any case as might have been made by the court before which the person convicted would have been tried if he had been tried on indictment; and

(2.) The conviction shall contain a statement as to the consent in the case of a child of his parent or guardian, and in the case of any other person, of such person, to be tried by a court of summary jurisdiction.

Return of property by order of court.

15. Where any property has been taken from any person charged with any offence before a court of summary jurisdiction, a statement shall be made to the court of summary jurisdiction before whom such person is brought of the fact of such property having been taken from the person charged, and the court shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and the safety of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

Special definitions for purposes of the Act.

16. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

A.D. 1877.

"Child" means a person who in the opinion of the court before which he is brought is under the age of twelve years:

"Young person" means a person who in the opinion of the court before which he is brought is of the age of twelve years and under the age of sixteen years:

"Prescribed" means prescribed or provided by any Act, passed before or after the commencement of this Act, which relates to any offences, penalties, costs, sums of money, orders, proceedings, or matters, to the punishment, recovery, making, or conduct of which the Summary Jurisdiction Acts expressly or impliedly apply or may be applied:

"Fine" includes any pecuniary forfeiture or pecuniary compensation payable under a conviction:

"A sum adjudged to be paid by a conviction or order" includes any sum in respect of which a court of summary jurisdiction can issue a warrant of distress:

"Summary Jurisdiction Acts," when used in reference to any matter or proceeding in the police district of Dublin metropolis, means the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and when used with reference to any matter or proceeding elsewhere in Ireland, means the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

"Court of summary jurisdiction" means any court having jurisdiction under the Summary Jurisdiction Acts.

Summary Jurisdiction Acts, how applied to other Acts.

17. The following regulations shall be made for the purpose of facilitating the application of the Summary Jurisdiction Acts to any Act of Parliament passed after the commencement of this Act; that is to say,

(1.) Where in any Act passed after the commencement of this Act any offence is directed or authorised to be prosecuted summarily, or on summary conviction, or any fine is directed or authorised to be recovered summarily or on summary conviction, or any other words are used implying that such offence or fine is to be prosecuted or recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(2.) Where in any Act passed after the commencement of this Act any sum of money is directed or authorised to be recovered summarily, or on complaint made to a court of summary jurisdiction, or in a summary manner, or any other words are used implying that such sum of money

is to be recovered in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly; and

(3.) Where in any Act passed after the commencement of this Act a court of summary jurisdiction is authorised to require any person to do or abstain from doing any act or thing other than the payment of a sum of money; or where any act or thing other than the payment of a sum of money is required or authorised to be done by an order of a court of summary jurisdiction, or is declared capable of being enforced summarily, or by summary order; or where any words are used implying that such act or thing is to be enforced in manner provided by the Summary Jurisdiction Acts, the Summary Jurisdiction Acts shall be deemed to apply accordingly.

Saving for Army and Militia Acts. See 38 & 39 Vict. c. 69. s. 87.

18. The provisions of this Act which enable a court of summary jurisdiction, notwithstanding any enactment to the contrary, to impose imprisonment without hard labour, and reduce the prescribed period thereof, or do either of such acts, and in the case of a fine, if it be imposed as in respect of a first offence, to reduce the prescribed amount thereof, shall not apply to any proceedings taken under any Act for punishing mutiny and desertion, or under any Act relating to the militia.

Exceptions from Act.

19. This Act shall not, nor shall any repeal thereunder, apply to any information, complaint, or other proceeding under or by virtue of any of the statutes relating to any of Her Majesty's revenues under the control of the Commissioners of Inland Revenue or the Commissioners of Customs.

Repeal of Acts.

20. There shall be repealed as from the commencement of this Act—

(1.) The Acts mentioned in the Third Schedule to this Act to the extent in the third column of that schedule mentioned; and

(2.) So much of any other Act as is inconsistent with this Act.

Provided, that this repeal shall not affect—

(1.) Anything duly done or suffered before the commencement of this Act under any enactment hereby repealed; or

(2.) Any right or privilege acquired, or any liability incurred, under any enactment hereby repealed;

(3.) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before

A.D. 1877.

the commencement of this Act against any enactment hereby repealed;

(4.) The institution or prosecution to its termination of any investigation or legal proceeding, or any other remedy for ascertaining, enforcing, or recovering any such liability, fine, forfeiture, or punishment as aforesaid.

Where any unrepealed Act of Parliament incorporates or refers to any provisions of any Act hereby repealed, such unrepealed Act shall be deemed to incorporate or refer to the corresponding provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

1. Simple larceny.

2. Offences declared to be punishable as simple larceny.

3. Larceny from or stealing from the person.

4. Larceny as a clerk or servant.

5. Embezzlement by a clerk or servant.

6. Receiving stolen goods, that is to say, committing any of the offences relating to property specified in the ninety-first and ninety-fifth sections of the Larceny Act, 1861, being the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six, or in either of such sections.

7. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid.

8. Aiding, abetting, counselling, or procuring the commission of simple larceny, or of an offence declared to be punishable as simple larceny.

9. Attempt to commit simple larceny, or an offence declared to be punishable as simple larceny, or to commit larceny from or steal from the person.

10. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.

11. The offences or any of them in relation to railways and railway carriages mentioned in sections thirty-two and thirty-three of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the statute law of England "and Ireland relating to offences against the person."

12. The offences or any of them relating to railways mentioned in section thirty-five of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the "statute law of England and Ireland relating to malicious injuries "to property."

SECOND SCHEDULE.

1. Simple larceny where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

2. Larceny from or stealing from the person where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

3. Larceny as a clerk or servant where the value of the whole of the property alleged to have been stolen does not in the opinion of the court before which the charge is brought exceed forty shillings.

4. Embezzlement by a clerk or servant where the value of the whole of the property embezzled does not in the opinion of the court before which the charge is brought exceed forty shillings.

5. Obtaining money or goods under false pretences, that is to say, committing any of the offences mentioned in section eighty-eight of the Larceny Act, 1861, aforesaid, where the value of the whole of the property alleged to have been obtained under false pretences does not in the opinion of the court before which the charge is brought exceed forty shillings.

6. Aiding, abetting, counselling, or procuring the commission of simple larceny.

7. Attempt to commit simple larceny.

8. Attempt to commit larceny from or steal from the person.

9. Attempt to obtain money or goods under false pretences, that is to say, an attempt to commit any of the offences in that behalf above mentioned.

THIRD SCHEDULE.

Session and Chapter.	Title or Abbreviated Title.	Extent of Repeal.
18 & 19 Vict. c. 82. -	An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases.	The whole Act, in so far as it relates to Ireland, except sections twenty-two, twenty-three, and twenty-four.
31 & 32 Vict. c. 116. -	An Act to amend the law relating to Larceny and Embezzlement.	Section two, in so far as it relates to Ireland.
36 & 37 Vict. c. 82. -	An Act to amend the law relating to Small Penalties in Ireland.	The whole Act.

Summary Jurisdiction (Ireland) Amendment (No. 2).

A

B I L L

[AS AMENDED IN COMMITTEE]

To amend the Law relating to Courts of Summary Jurisdiction in Ireland.

(*Prepared and brought in by Sir Colman O'Loghlen and Mr. Errington.*)

Ordered, by The House of Commons, *to be Printed*, 4 *June* 1877.

[Bill 185.]

Under 2 *oz.*

Summary Prosecutions Bill.

ARRANGEMENT OF CLAUSES.

Clause.

1. Short title.
2. Commencement of Act.
3. Prosecutor or defendant may demand trial by indictment where offence punishable with three or more months imprisonment.
4. Where court has power to imprison for three months or less, it may fine ten pounds instead.
5. Parties, &c. may be witnesses.
6. If not expedient to inflict punishment justices may dismiss without convicting.
7. Appeal.
8. Power to High Court to deal with facts.
9. Power of High Court on appeal.
10. High Court to give precedence to cases of appeal where appellant is in custody.
11. Court may dispense with sureties.
12. High Court may extend time of transmitting case.
13. No fees payable in a criminal case.
14. Procedure in appeal to sessions.
15. Quarter sessions may give costs of appeal in same manner as in prosecutions for felony.
16. Payment of penalty by instalments by finding surety.
17. In default justices may enforce payment.
18. Justices may refuse to commit or distrain to enforce payment of fine, costs, &c.
19. No court of summary jurisdiction to imprison for more than six months.
20. Persons imprisoned in default of sureties may be released, &c.
21. Duty of court as to persons imprisoned in default of sureties.
22. Recognizances may be signed before clerk to justices, police, &c.

Clause.
23. Justices clerks to be paid by salaries instead of fees.
24. Clerk to justices.
25. Appointment of paid chairman, &c.
26. Court to order remuneration.
27. Legal chairman, &c. to be a justice, &c.
28. Quarter sessions may apply for appointment of stipendiary magistrates in counties.
29. Secretary of State to recommend justices and to dismiss for cause.
30. Secretary of State to draw up rules for petty sessions.
31. Qualification of justices.
32. Justice must be thirty years of age.
33. Interpretation.

A

B I L L

TO

Amend the Law relating to Summary Procedure before Justices, to extend the right of Appeal in certain cases, and for other purposes relating to the Administration of Justice. A.D. 1877.

WHEREAS the law which at present governs the procedure before justices of the peace in criminal or quasi crimina cases within their summary jurisdiction is too rigid, and compels unnecessary imprisonment:

And whereas the liberty of the subject is insufficiently guarded by right of appeal:

And whereas the mode of appointing and the qualification required for justices are not satisfactory:

Whereas the law may in other respects be amended to the great improvement of the administration of justice:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Summary Jurisdiction and Appeal Act, 1877."

Commencement of Act.

2. This Act shall come into force on the *first day of January one thousand eight hundred and seventy-eight.*

Prosecutor or defendant may demand trial by indictment where offence punishable with three or more months imprisonment.

3. Where a person is accused before a court of summary jurisdiction, justices, or justice, of any offence punishable with *three* or more months imprisonment, either he or the party complaining may object to the case being tried by the said court of summary jurisdiction, and thereupon the said court may deal with the case in all respects as if the accused were charged with an indictable offence, and it may be prosecuted on indictment accordingly.

Where court has power to imprison for three months or less, it

4. In all cases where the offence is by law punishable with imprisonment for *three* months or less, and no option to fine is given, the court of summary jurisdiction, justices, or justice having

A.D. 1877.

may fine 10*l.* instead.

jurisdiction over the offence shall have power and discretion to inflict a fine not exceeding *ten pounds* instead of imprisonment.

Parties, &c. may be witnesses.

5. In all cases before a court of summary jurisdiction, justices, or justice, the defendant, or the husband or wife of the defendant, shall be a competent witness.

If not expedient to inflict punishment justices may dismiss without convicting.

6. If upon the hearing of any charge punishable on summary conviction the court of summary jurisdiction, justices, or justice shall be of opinion there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged without proceeding to a conviction.

Appeal.

7. In all cases of summary jurisdiction, other than felony, where the court of summary jurisdiction, justices, or justice shall have ordered imprisonment without the option of paying a fine, the defendant shall be entitled to appeal to the quarter sessions of the county, borough, or place.

Power to High Court to deal with facts.

8. On the hearing of a case under the Act passed in the twenty-first year of the reign of Her present Majesty, chapter forty-three, the High Court of Judicature is hereby empowered to draw its own inferences from the facts and documents stated.

Power of High Court on appeal.

9. The High Court may, on the hearing of any such case, alter any sentence of imprisonment to a shorter term, or to a fine payable at once, or by instalments, with or without sureties, as it may think fit.

High Court to give precedence to cases of appeal where appellant is in custody.

10. The High Court shall give precedence before other business to any case of appeal where the appellant is actually in prison under the sentence or decision appealed against.

Court may dispense with sureties.

11. In all cases of appeal to quarter sessions, or by case under the last recited Act, the justices or the justice who heard the case may, if satisfied the defendant cannot obtain the sureties by law required, reduce the amount of, or number of, or dispense with, such sureties.

High Court may extend time of transmitting case.

12. The High Court or any judge thereof may, if it appear reasonable, extend the time of transmitting a case to the court before or after the three days named in the said Act shall have expired.

No fees payable in a criminal case.

13. No fees shall henceforth be paid by prosecutor or defendant in any criminal case to any court of summary jurisdiction, justice, or clerk, or to the court of quarter sessions, or its officers on appeal, or to the High Court in respect of a case stated by justices.

Procedure in appeal to sessions.

14. In all cases of appeal to the quarter sessions the procedure enacted by section twelve of the Conspiracy and Protection of Property Act, 1875, shall be followed.

Quarter sessions may give costs of appeal in same manner as in prosecutions for felony.

15. In all cases of appeal to the quarter sessions the court may, if it think fit, allow the costs of the appeal to the respondents or appellants in the same manner as it may by law allow the costs of the prosecutions in cases of felony, and every order for the payment of such costs shall be made out, and the sum of money therein mentioned paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

Payment of penalty by instalments by finding surety.

16. In all cases where the court of summary jurisdiction, justices, or justice have power to convict and order payment of a fine, penalty, compensation, costs, or sum of money, they may, if satisfied of the present inability of the defendant to pay, order him to pay by instalments, of such amounts and at such dates as they may think fit, and may bind him over alone or with surety or sureties accordingly.

In default, justices may enforce payment.

17. In default of payment of any of the instalments, the same court, justices, or others sitting and acting in their place may, if they think fit, from time to time enforce payment from the surety, if any, by distress, or from the defendant by distress and imprisonment.

Justices may refuse to commit or distrain to enforce payment of fine, costs, &c.

18. In all cases where, under any conviction or order, the payment of any fine, compensation, costs, or sum of money by any defendant or surety of a defendant is sought to be enforced by imprisonment or distress, the court of summary jurisdiction, justices, or justice shall have full discretion, if they think it expedient and just, to refuse, withhold, or suspend any warrant of committal or distress.

No court of summary jurisdiction to imprison for more than six months.

19. No court of summary jurisdiction, justices, or justice shall by accumulated sentences in different cases, consecutive or otherwise, or by requiring to find sureties, order or procure any one to be imprisoned for more than the space of *six months*, any statute or law to the contrary notwithstanding.

Persons imprisoned in default of sureties may be released, &c.

20. Where anyone has been held to bail or ordered to find sureties to keep the peace or for good behaviour, and in default been committed to prison, it shall be lawful for the court, justices, or justice so committing, or for the court, justices, or justice sitting or acting in their places, of their own motion, or on application made, from time to time to inquire into the means possessed by the defendant of procuring such bail or sureties, and having regard to all the circumstances of the case to reduce the amount of such bail, or of such sureties, or to dispense with the same, and release the defendant on his own recognizance, and on any breach of the same to commit him again to gaol as on the first default.

A.D. 1877.

Duty of court as to persons imprisoned in default of sureties.

21. It shall be the duty of the court, justices, or justice to take note of all such their orders to commit or re-commit in default of sureties, and make inquiries concerning them with the view to the use of the powers above mentioned, so that unnecessary imprisonment may be lessened.

Recognizances may be signed before clerk to justices, police, &c.

22. When a court of summary jurisdiction, justices, or justice shall have fixed the amount and number of bail or sureties in any case, and sufficient bail or sureties be found, it shall not be necessary that the recognizances be entered into before the court, justices, or a justice, but the ordinary recognizance, altered to state the fact, may be signed by the parties in the presence of any clerk to the justices, or any superior officer or inspector of the police, and thereupon all the consequences of law shall follow and apply as if the recognizance had been entered into as heretofore by law required.

Justices clerks to be paid by salaries instead of fees.

23. The justices of the peace at their general or quarter sessions for the several counties, ridings, divisions, and liberties throughout England and Wales, and the council or other governing body in every city or borough in England, shall proceed according to the provisions contained in the ninth and following sections of the Act passed in the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, to provide for the payment of the clerks therein referred to by salaries instead of fees.

Clerk to justices.

24. No one who is not a solicitor of the Supreme Court, in actual practice, shall be appointed the permanent clerk to justices at petty sessions for any division or to any stipendiary magistrate. No clerk being interested for himself or on behalf of any one else in the decision of any case shall advise the court or justices thereon.

Appointment of paid chairman, &c.

25. Any court of quarter sessions, or general sessions, or adjourned quarter sessions for any county, riding, hundred, or other division may appoint in every year a barrister of ten years standing to be chairman or deputy chairman of the sessions, and may, in addition, at the commencement of any sessions, whenever it may deem it expedient for the public service, appoint a barrister of the like standing to be assistant chairman to preside in the trial of appeals and prisoners in the second court at those sessions.

Court to order remuneration.

26. The said court shall fix the amount and order the payment or remuneration of such chairman, deputy or assistant chairman.

Legal chairman, &c. to be a justice, &c.

27. Such chairman, deputy chairman, or assistant chairman must be or become a justice of the peace for the county, riding, hundred, or other division for which the said sessions are held, but

need not have any other qualification now required by law for justices of the peace. A.D. 1877.

Quarter sessions may apply for appointment of stipendiary magistrates in counties.

28. If the court of quarter sessions of any county, riding, hundred, or other division shall think it requisite that a stipendiary magistrate or magistrates be appointed within such county, such court may fix the amount of the salary which he or they are to receive, and may make representation thereof to one of Her Majesty's Principal Secretaries of State, and thereupon it shall be lawful for Her Majesty to appoint one or more fit persons, according to the representation (being barristers-at-law of not less than five years standing), to be police magistrate or magistrates and justice or justices of the peace in and for such county, riding, hundred, and other division, or any district thereof, and to direct that the said salary be paid quarterly by the county treasurer out of the county funds.

Secretary of State to recommend justices and to dismiss for cause.

29. The recommendation of justices of the peace to Her Majesty the Queen for appointment shall henceforth be exercised by Her Secretary of State for the Home Department, and to him shall be committed the duty of watching the due discharge of their duties by justices of the peace, as well as of advising their removal for inefficiency, incapacity, or misconduct.

Secretary of State to draw up rules for petty sessions.

30. Her Majesty's Secretary of State for the Home Department may draw up elementary rules of general application and importance in the conduct of business and the trial of offences before courts of summary jurisdiction, justices, or justice for the advice and guidance of such courts and justices, and cause the same to be printed, and order a copy thereof to be suspended in every court house with full liberty and access of the public to read them.

Qualification of justices.

31. Instead of the qualification required by law to be a justice of the peace, it shall be sufficient that he be a member of the legal profession, or the holder of a certificate that he has passed an examination in some appropriate branch of law at an university or public college in England or Wales, or in one of the inns of court, or be a member of either House of Parliament, or have served the office of sheriff, mayor, town councillor, guardian of the poor, member of local government board, or school board, or any other office of public trust or duty, or under any commission, civil, naval, or military.

Justice must be thirty years of age.

32. No person shall be appointed justice of the peace under thirty years of age.

A.D. 1877.

Interpretation.

33. In this Act the expression "court of summary jurisdiction" means any court the proceedings of which are regulated and on which jurisdiction is conferred in and by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance "of the duties of Justices of the Peace out of Sessions within "England and Wales," with respect to summary convictions and orders, inclusive of any Acts amending the same.

Summary Prosecutions.

A

B I L L

To amend the Law relating to Summary Procedure before Justices, to extend the right of Appeal in certain cases, and for other purposes relating to the Administration of Justice.

(Prepared and brought in by Mr. Hopwood, Mr. Mundella, Mr. Burt, and Mr. Pennington.)

Ordered, by The House of Commons, *to be Printed,* 9 *February* 1877.

[Bill 9.] *Under* 1 *oz.*

A

B I L L

TO

Make provision respecting the Superannuation Allowance of Officers whose Salaries were formerly payable out of the Mercantile Marine Fund. A.D. 1877.

WHEREAS by section thirty-nine of the Merchant Shipping Act, 1876, the salaries of surveyors appointed under the Merchant Shipping Acts, 1854 to 1876, and of persons employed under the Passengers Act, 1855, which were formerly payable out of the Mercantile Marine Fund, were directed to be paid, after the first day of January one thousand eight hundred and seventy-seven, out of moneys provided by Parliament, but no provision was made with respect to the superannuation allowances of those of the said surveyors and persons whose salaries had been previously paid out of the Mercantile Marine Fund, and it is expedient to make such provision: 39 & 40 Vict. c. 80. 17 & 18 Vict. c. 104. 18 & 19 Vict. c. 119.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Superannuation (Mercantile Marine Fund Officers) Act, 1877. Short title.

2. Where any superannuation or other retiring allowance was previously to the first day of January one thousand eight hundred and seventy-seven payable out of the Mercantile Marine Fund to any person in respect of his service as a surveyor appointed under the Merchant Shipping Acts, 1854 to 1876, or of his employment under the Passengers Act, 1855, such allowance shall be payable, and be deemed to have been payable, on and after the said first day of January one thousand eight hundred and seventy-seven, out of moneys provided by Parliament. Transfer of existing pensions to money to be provided by Parliament. 17 & 18 Vict. c. 104. 39 & 40 Vict. c. 80. 18 & 19 Vict. c. 119.

[Bill 224.]

A.D. 1877.

Grant of pension to existing officers.

39 & 40 Vict. c. 80.

3. Where a surveyor appointed under the Merchant Shipping Acts 1854 to 1876, or a person employed under the Passengers Act 1855, was immediately previous to the first day of January one thousand eight hundred and seventy-seven receiving a salary out of the Mercantile Marine Fund, and since that date has in pursuance of section thirty-nine of the Merchant Shipping Act 1876 received such salary out of moneys provided by Parliament, the Commissioners of Her Majesty's Treasury may grant to such surveyor or person, upon retirement or removal from his office or employment, the same superannuation allowance, gratuity, pension, or other allowance (if any), as might have been granted to him if he had continued to receive his salary out of the Mercantile Marine Fund; and in calculating the amount of such superannuation, allowance, gratuity, pension, or other allowance, his service during the period that his salary was paid out of the Mercantile Marine Fund, and his service during the period that his salary was paid out of moneys provided by Parliament, shall be reckoned indifferently as the same service.

Superannuation (Mercantile Marine Fund Officers).

A

B I L L

To make provision respecting the Superannuation Allowance of Officers whose Salaries were formerly payable out of the Mercantile Marine Fund.

(*Prepared and brought in by Mr. Raikes, Mr. William Henry Smith, and Sir Charles Adderley.*)

Ordered, by The House of Commons, *to be Printed*, 29 *June* 1877.

[Bill 224.]

Under 1 *oz.*

A

B I L L

FOR

Amending the Supreme Court of Judicature Acts, 1873 and 1875.

A.D. 1877.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title of Act.

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and together with the said Acts may be cited as The Supreme Court of Judicature Acts, 1873, 1875, 1877, and this Act may be cited separately as "The Supreme Court of Judicature Act, 1877."

Appointment of additional judge of High Court of Justice.

2. It shall be lawful for Her Majesty to appoint a judge of the High Court of Justice in addition to the number of judges of that court authorised to be appointed by the Supreme Court of Judicature Acts 1873, 1875.

Position of additional judge.

3. The judge appointed in pursuance of this Act shall be in the same position as if he had been appointed a puisne judge of the said High Court in pursuance of the Supreme Court of Judicature Acts, 1873, 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne judges of the said High Court, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such judges, and all other provisions relating to such puisne judges, with the exception of such provisions as apply to existing judges only, shall apply to the additional judge appointed in pursuance of this section in the same manner as they apply to the other puisne judges of the said court respectively. The judge appointed in pursuance of this Act shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Judicature Act, 1873, mentioned.

[Bill 103.]

A.D. 1877.

Definition of puisne judge.

4. A puisne judge of the High Court of Justice means for the purposes of this Act a judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively.

Supreme Court of Judicature.

A

BILL

For amending the Supreme Court of Judicature Acts, 1873 and 1875.

(*Prepared and brought in by Mr. Attorney-General, Mr. Secretary Cross, and Mr. William Henry Smith.*)

Ordered, by The House of Commons, *to be Printed*, 28 *February* 1877.

[Bill 103.]

Under 1 *oz.*

Supreme Court of Judicature (Ireland) Bill.

ARRANGEMENT OF CLAUSES.

Preliminary.

Clauses.

1. Short title.
2. Commencement of Act.
3. Interpretation of terms.

PART I.

Constitution and Judges of Court of Judicature.

4. Union of existing Courts into one Supreme Court of Judicature.
5. Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.
6. Constitution of High Court of Justice in Ireland.
7. As to Judges of Landed Estates Court.
8. As to Judges of Court of Bankruptcy.
9. Existing Judge of Admiralty.
10. Constitution of Court of Appeal.
11. Vacancies by resignation of Judges and effect of vacancies generally.
12. Qualifications of Judges.
13. Tenure of office of Judges, and oaths of office.
14. Precedence of Judges.
15. Saving of rights and obligations of existing Judges.
16. Provisions for extraordinary duties of Judges of the former Courts.
17. Salaries of certain existing Judges.
18. Salaries of future Judges.
19. Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.
20. Salaries and pensions how to be paid.

PART II.

Jurisdiction and Law.

Clauses.

21. Jurisdiction of High Court of Justice.
22. Jurisdiction not transferred to High Court.
23. Jurisdiction transferred to Court of Appeal.
24. Appeals from High Court.
25. Transfer of pending business.
26. Rules as to exercise of jurisdiction.
27. Law and equity to be concurrently administered.
28. Rules of law upon certain points. Administration of assets of insolvent estates. Statutes of Limitation inapplicable to express trusts. Equitable waste. Merger. Suits for possession of land by mortgagors. Assignment of debts and choses in action. Stipulations not of the essence of contracts. Injunctions and receivers. Damages by collisions at sea. Infants. Cases of conflict not enumerated.

PART III.

Sittings and Distribution of Business.

29. Abolition of terms.
30. Vacation.
31. Sittings in vacation.
32. Jurisdiction of Judges of High Court on Circuit.
33. Sittings for trial by jury in Dublin.
34. Divisions of the High Court of Justice.
35. Rules of Court to provide for distribution of business.
36. Assignment of certain business to particular Divisions of High Court, subject to Rules.
37. Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.
38. Power of transfer.
39. Directions as to procedure in Landed Estates Court.
40. Sittings in Dublin and on Circuits.
41. Rota of Judges for election petitions.
42. Powers of one or more Judges not constituting a Divisional Court.
43. Divisional Courts of the High Court of Justice.

Clauses.

44. Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.
45. Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.
46. Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.
47. Land cases reserved.
48. Provision for Crown cases reserved.
49. Motions for new trials to be heard by Divisional Courts.
50. What orders shall not be subject to appeal.
51. Costs.
52. As to discharging orders made in Chambers.
53. Provision for absence or vacancy in the office of a Judge.
54. Power of a single Judge in Court of Appeal.
55. Constitution of Court of Appeal when hearing Appeals.
56. Arrangements for business of Court of Appeal.

PART IV.

Trial and Procedure.

57. References and assessors.
58. Power to direct trials before Referees.
59. Power of Referees and effect of their findings.
60. Powers of Court with respect to proceedings before Referees.
61. 33 & 34 Vict. c. 109. ss. 5 and 6 to extend to actions in High Court.
62. Provision as to making of Rules of Court before or after the commencement of the Act.
63. Circuits and Assizes.
64. Winter Assizes.
65. Rules of Courts of Probate and for Matrimonial Causes to be Rules of the High Court.
66. Criminal procedure, subject to future Rules, to remain unaltered.
67. Act not to affect rules of evidence.
68. Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

Clauses.
69. Additional power as to regulation of practice and procedure by Rules of Court.
70. Orders and Rules to be laid before Parliament, and may be annulled on address from either House.
71. Councils of Judges to consider procedure and administration of justice.
72. Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

PART V.

Officers and Offices.

73. Transfer of existing staff of officers to Court of Judicature.
74. Appointment of future officers of Supreme Court.
75. Powers of Commissioners to administer oaths.
76. Receiver Master.
77. Salaries and pensions of officers.
78. Clerks of Assize and Nisi Prius.
79. Solicitors and attorneys.

PART VI.

Jurisdiction of Inferior Courts.

80. Rules of law to apply to inferior Courts.

PART VII.

Miscellaneous Provisions.

81. Transfer of books and papers to Court of Judicature.
82. Saving as to circuits, &c.
83. Saving as to Lord Chancellor.
84. Provisions as to Great Seal being in commission.

PART VIII.

85. Fixing and collection of fees in High Court and Court of Appeal.

PART IX.

Unclaimed Dividends in Bankruptcy.

Clauses.

86. Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

PART X.

Final Appeal.

87. Final appeal to House of Lords.

A

B I L L

FOR

The constitution of a Supreme Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland. A.D. 1877.

WHEREAS it is expedient to constitute a Supreme Court of Judicature, and to make provision for the better administration of justice, in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act (Ireland), 1877." Short title.

2. This Act, except where otherwise expressly provided, shall commence and come into operation on *the first day of January one thousand eight hundred and seventy-eight.* Commencement of Act.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several expressions herein-after mentioned shall have, or include, the meanings following; (that is to say,) Interpretation of terms.

"High Court of Chancery" and "Court of Chancery" respectively shall mean the High Court of Chancery in Ireland, and shall include the Lord Chancellor.

"Court of Queen's Bench" shall mean the Court of Queen's Bench in Ireland.

"Court of Common Pleas" shall mean the Court of Common Pleas in Ireland.

"Court of Exchequer" shall mean the Court of Exchequer in Ireland.

"High Court of Admiralty" shall mean the High Court of Admiralty of Ireland.

"Court of Probate" shall mean the Court of Probate in Ireland.

A.D. 1877.

"Court for Matrimonial Causes and Matters" shall mean the Court for Matrimonial Causes and Matters in Ireland.

"Landed Estates Court" shall mean the Landed Estates Court, Ireland.

"Court of Bankruptcy" shall mean the Court of Bankruptcy in Ireland.

"Lord Lieutenant" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.

"Lord Chancellor" shall mean Lord Chancellor of Ireland, and shall include Lords Commissioners and Lord Keeper of the Great Seal of Ireland.

"The Lord Chief Justice" shall mean the Lord Chief Justice of Ireland.

"Master of the Rolls" shall mean the Master of the Rolls in Ireland.

"Lord Justice of Appeal" shall mean the Lord Justice of Appeal in Chancery in Ireland.

"Vice-Chancellor" shall mean the Vice-Chancellor of Ireland.

"High Court" shall mean Her Majesty's High Court of Justice in Ireland established by this Act.

"Court of Appeal" shall mean Her Majesty's Court of Appeal in Ireland established by this Act.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by or in the name of the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by cause, action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

"Registration of Voters Acts" shall mean the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, and all other Acts or parts of Acts relating to the registration or qualification of persons entitled to vote at the election of members to serve in Parliament for Ireland.

"Land" shall have the same meaning as in the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-two, intituled "An Act to facilitate the sale and transfer of land in "Ireland."

"Officers" shall include "clerks."

PART I.

Constitution and Judges of Court of Judicature.

Union of existing Courts into one Supreme Court of Judicature.

4. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery, the Court of Queen's Bench, the Court of Common Pleas, the Court of Exchequer, the Court of Probate, the Court for Matrimonial Causes and Matters, and the

A.D. 1877.

Landed Estates Court, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in Ireland.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

5. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice in Ireland," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal in Ireland," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution of High Court of Justice in Ireland.

6. Her Majesty's High Court of Justice in Ireland shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the Vice-Chancellor, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, the Judge of the Court of Probate and of the Court for Matrimonial Causes and Matters, and the Judges of the Landed Estates Court, except such, if any, of the aforesaid Judges as shall be appointed an ordinary Judge of the Court of Appeal.

The Lord Chancellor shall be appointed and shall hold his office in the same manner as heretofore.

Whenever the office of a Judge of the said High Court, other than the Lord Chancellor, shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent.

All persons to be hereafter appointed to fill the places of the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge, other than the Lord Chancellor and the Judges last-mentioned, who shall be appointed to fill the place of any Judge of the High Court of Justice, shall be styled in his appointment "Judge of Her Majesty's High Court of Justice in Ireland."

Any vacancy which may exist at the time of the commencement of this Act, or the first vacancy which shall occur next after the commencement of this Act, in any one of the offices of the Puisne Justices of the Common Pleas or of the Junior Barons of the

Exchequer respectively, shall not be filled by the appointment of any new Judge, save by virtue of the provisions in that behalf herein-after contained. A.D. 1877.

Provided always, that when first after the commencement of this Act one of the existing Judges of the Landed Estates Court shall die, resign, or otherwise vacate his office, the vacancy thus occasioned shall not be filled up until a Commission shall have been issued by Her Majesty under her Royal Sign Manual to ascertain and report whether the business in connexion with the Division of the High Court of Justice (herein-after termed the Chancery Division) makes it requisite that such appointment should be made, nor until the expiration of a period of *forty* days after the date of such report, if Parliament be then sitting, and if Parliament be not then sitting, until the expiration of a period of *forty* days after the commencement of the then next Session of Parliament.

All the Judges of the Supreme Court shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law in Ireland, and shall have in all respects, save as in this Act otherwise expressly provided, equal power, authority, and jurisdiction.

The Lord Chancellor for the time being, or in his absence the Lord Chief Justice for the time being, shall be President of the High Court of Justice.

As to Judges of Landed Estates Court.

7. The jurisdiction exercised by the Judges of the Landed Estates Court shall continue to be exercised by them, and by the Judges who may from time to time be appointed to succeed them, and, in the case of illness, absence, or other inability of them or either of them to discharge their duties, or of a vacancy in the office of the said Judges or either of them, by any other Judge of the Chancery Division of the High Court.

If the state of business, in connexion with their peculiar jurisdiction, shall permit, the said Judges shall in addition be bound from time to time to assist in the general business of the Chancery Division.

The existing Judges of the Landed Estates Court and their successors shall be Judges of the Division of the High Court of Justice in this Act termed the Chancery Division, and shall be distinguished as the Land Judges of the said Division. The rules and orders and practice of the Landed Estates Court shall continue to be used in proceedings for the sale or partition of estates, declaration or record of titles, and all other proceedings which would have been within the exclusive cognizance of the Landed Estates Court if this Act

A.D. 1877.

had not passed, before the Land Judges, unless and until altered by the Lord Chancellor and the said Judges. The Lord Chancellor and the Land Judges, or either of them, may from time to time alter the rules and orders and practice in all proceedings before the Land Judges, and make new rules and orders for the regulation of such practice and proceedings.

There shall be a separate seal for the Land Judges, and conveyances executed with this seal shall have the same force as those executed with the seal of the Landed Estates Court.

As to Judges of Court of Bankruptcy.

8. The existing Judges of the Court of Bankruptcy and their successors in such offices respectively shall be appointed in the same manner as heretofore, and shall, as to tenure of office, rank, title, patronage, rights, privileges, and powers of appointment and dismissal, salary, pension, jurisdiction, powers, and authority respectively, remain and be in the same condition and be liable to discharge the same duties respectively, and none other, as if this Act had not been passed.

The practice and procedure of the Court of Bankruptcy, and the powers to make rules and orders regulating the same, shall continue and be exercised in the same manner as if this Act had not been passed. The tenure, salaries, pensions, rights, privileges, and duties of the officers of the said Court shall also continue the same as if this Act had not been passed.

Appeals from orders of the Judges of the said Court shall lie to the Court of Appeal constituted by this Act, in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

Existing Judge of Admiralty.

9. The existing Judge of the High Court of Admiralty shall retain the same jurisdiction, authority, rights of patronage, and of dismissal, rank, and salary as if this Act had not been passed.

Appeals from his orders and decrees shall lie to the Court of Appeal constituted by this Act in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

When the existing Judge of the High Court of Admiralty shall die, resign, or otherwise vacate his office, no person shall be appointed to succeed him in his said office, and thereupon the High Court of Admiralty in Ireland shall be united and consolidated with the Supreme Court of Judicature in Ireland, and all the jurisdiction vested in and capable of being exercised by the Judge

of the said Court of Admiralty, and all causes and proceedings then pending in the said Court, shall be transferred to the High Court of Justice. The jurisdiction theretofore vested in and capable of being exercised by the Judge of the said Court of Admiralty shall thenceforth be vested in and may be exercised by the Judge of the Probate and Matrimonial Division herein-after constituted; and all causes and proceedings in Admiralty, whether so transferred or afterwards commenced, shall proceed and be heard before and by such last-mentioned Judge. Until such transfer of jurisdiction to the High Court of Justice as aforesaid the Lord Chancellor, with the concurrence of the Treasury, shall, on vacancy in the offices of the Admiralty Court, make provision for the temporary discharge of the duties of such offices.

It shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor and the concurrence of the Treasury, to release the existing Judge of the Court of Admiralty from the further discharge of his duties, but without prejudice to his right to continue to receive his salary; and thereupon the several provisions herein-before expressed to take effect on resignation or other vacancy of his office shall come into operation.

Constitution of Court of Appeal.

10. Her Majesty's Court of Appeal in Ireland shall be constituted as follows: There shall be four ex officio Judges thereof, and two ordinary Judges, who shall from time to time be appointed by Her Majesty. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lord Justice of Appeal in Chancery, and such other person as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either before or after the commencement of this Act, and if made before shall take effect from the commencement of this Act, and may be made upon the terms as to salary and otherwise, and subject to the conditions and in the manner provided by the "Chancery Appeal Court (Ireland) Act, 1856," in respect of the office thereby created.

Besides the said ex officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit) to appoint under Her Royal Sign Manual as additional Judges of the Court of Appeal any persons who, having held the office of Lord Chancellor or of Chief Justice, Chief Justice of the Common Pleas, or Chief Baron of the Exchequer in Ireland, shall signify in writing their willingness to serve as such additional Judges.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said

A.D. 1877.

Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent, as provided by the "Chancery Appeal Court (Ireland) Act, 1856."

The Lord Chancellor for the time being shall be President of the Court of Appeal. Except in matters which are by this Act, or by some other Act, specially reserved to the Lord Chancellor, he shall not be bound or required to exercise any of the functions of a Judge of the High Court, or of the Chancery Division of the same, unless be shall, by special order, direct that any matter shall be disposed of by himself, but all such matters shall be disposed of by one of the other Judges of the Chancery Division, and the Lord Chancellor shall in relation to such matters exercise only the functions of a Judge of the Court of Appeal.

Vacancies by resignation of Judges and effect of vacancies generally.

11. The office of any Judge of the Court of Appeal or of any Judge of the High Court of Justice may be vacated by resignation in writing, under his hand, addressed to the Lord Lieutenant, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed to the office of ordinary Judge of the Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge.

Qualifications of Judges.

12. Any person who has practised for not less than *ten* years at the Bar of Ireland shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed Lord Justice of the Court of Appeal in Chancery in Ireland, or has been a Judge of the High Court of Justice of not less than *one* year's standing, shall be qualified to be appointed to the office of ordinary Judge of the said Court of Appeal.

Tenure of office of Judges, and oaths of office.

13. Every Judge of the High Court of Justice other than the Lord Chancellor, and every ordinary Judge of the Court of Appeal, shall hold his office for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868.

The oaths to be taken by the Lord Chancellor shall be the same as heretofore. A.D. 1877.

Precedence of Judges.

14. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court of Judicature in Ireland in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal shall rank as provided by the "Chancery Appeal Court (Ireland) Act, 1856," and if otherwise of equal rank, between themselves according to the priority of their respective appointments.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the ordinary Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

Saving of rights and obligations of existing Judges.

15. Every existing Judge who is by this Act made a Judge of the High Court of Justice or ordinary Judge of the Court of Appeal shall, as to tenure of office, rank between himself and the other existing Judges, title, patronage, and powers of appointment and dismissal, and all other privileges and disqualifications, and also as to salary and pension, save as is herein provided, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, every such existing Judge shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed.

No Judge, whether of the High Court of Justice or of the Court of Appeal, who was appointed before the first of January one thousand eight hundred and seventy-five shall be required, without his own consent, to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or for the trial of crimes and offences, unless he was so liable by usage or custom at the time of the passing of this Act; but every Judge, whether of the High Court of Justice or of the Court of Appeal, appointed after the said date shall from and after the passing of this Act be capable and bound to act in such Commission, if named therein.

Service as a Judge in the High Court of Justice, or as an ordinary Judge in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

The provisions of this section shall not apply to the Lord Chancellor.

A.D. 1877.

Provisions for extraordinary duties of Judges of the former Courts.

16. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of Justice in any Court whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, every Judge of the said High Court, except where otherwise expressly directed by this Act, shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid upon the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Salaries of certain existing Judges.

17. From and after the time fixed for the commencement of this Act, there shall be paid to the existing Judges herein-after mentioned the following salaries; that is to say,

To the Master of the Rolls *four thousand* pounds a year.

To each of the Puisne Justices and Junior Barons, and to the Judge of the Courts of Probate and for Matrimonial Causes and Matters, *three thousand eight hundred* pounds a year.

Such salaries shall be instead of the salaries by law payable to such Judges immediately before such commencement, and such salaries shall be paid to such Judges respectively on the same days and in the same manner in every respect as their former salaries; the pension which may be granted to the existing Master of the Rolls shall be such as would be payable to him if this Act had not passed, and the pensions which may be granted to all other existing Judges shall be *two thirds* of the salaries which, after the commencement of this Act, shall be payable to them respectively.

Salaries of future Judges.

18. There shall be paid to Judges appointed after the commencement of this Act the following salaries, which shall in each case include any pension to which the Judge may be entitled in respect of any public office previously filled by him:

To the Lord Chief Justice *five thousand* pounds a year, and to the Lord Chief Justice of the Common Pleas, and the Lord

Chief Baron of the Exchequer, each, *four thousand six hundred* pounds a year.

To each ordinary Judge of the Court of Appeal such salary as in pursuance of the "Chancery Appeal Court (Ireland) Act, 1856," might have been assigned for him if he had been appointed under the said Act.

To each of the other Judges of the High Court of Justice, the sum of *three thousand five hundred* pounds a year.

The Chiefs of the Divisions termed in this Act the Queen's Bench, Common Pleas, and Exchequer Divisions, whether appointed before or after the commencement of this Act, and the other Judges of the same Divisions who were appointed before the commencement of this Act, shall not be entitled to any allowance in addition to their salaries in respect of circuit. Every other Judge of the High Court of Justice, or of the Court of Appeal, whether appointed before or after the commencement of this Act, who shall actually go circuit as a Judge shall be entitled to receive in respect of such circuit *one hundred and fifty* pounds. This last provision shall apply, immediately on the passing of this Act, to any Judge who, not being a Judge of a Common Law Court, shall be named in the commission and shall actually go circuit.

Any Judge, whether appointed before or after the passing of this Act, who shall be sent as Judge for a winter assizes or special commission shall be entitled to receive in respect thereof such additional payment, not exceeding the amount allowed for a circuit, as the Lord Lieutenant shall determine; but no Judge shall receive any additional or extra payment in respect of an adjourned assizes: Provided always, that nothing herein contained shall affect such rights to remuneration in respect of any adjourned assizes as the existing Lord Chief Justice, Chief Justice of the Common Pleas, and Lord Chief Baron possessed before the passing of this Act.

No salary shall be payable to any additional Judge of the Court of Appeal, but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

19. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice other than the Lord Chancellor and also to any ordinary Judge of the Court of Appeal appointed after the commencement of this Act who has served for *fifteen* years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his

A.D. 1877.

office, a pension, by way of annuity, to be continued during his life, of the amount following; (that is to say,)

In the case of the ordinary Judges of the Court of Appeal, the same amount of pension which might have been granted to the Lord Justice of the Court of Appeal in Chancery in Ireland if this Act had not passed:

In the case of the Judges of the High Court of Justice, *two thirds* of their respective salaries.

Salaries and pensions how to be paid.

20. *The salaries, allowances, and pensions payable to the Judges of the High Court of Justice and the ordinary Judges of the Court of Appeal respectively under this Act, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.*

PART II.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

21. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him or the Lord Chancellor in relation to the Court of Chancery as a Common Law Court, and including any jurisdiction of the Masters in Chancery:

(2.) The Court of Queen's Bench:

(3.) The Court of Common Pleas:

(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court:

(5.) The Court of Probate:

(6.) The Court for Matrimonial Causes and Matters:

(7.) The Landed Estates Court, including the control and direction of the Record of Title Office of the said Court, and all

powers and authorities exercised by the Judges of the said Court, or any of them, under the Record of Title Act, 1865:

(8.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, or by any Master of the Court of Chancery, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, Masters or Master, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Provided always, that nothing herein contained shall abridge or alter the jurisdiction conferred by any Act or Acts upon any Judge or Judges, Commissioner or Commissioners, of Assize.

Jurisdiction not transferred to High Court.

22. There shall not be transferred to or vested in the High Court of Justice, by virtue of this Act,

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, or the High Court of Admiralty:

(2.) Any jurisdiction usually vested in the Lord Chancellor in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

(3.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of Ireland:

(4.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:

(5.) Any jurisdiction of the Master of the Rolls in relation to records in Dublin or elsewhere in Ireland.

Jurisdiction transferred to Court of Appeal.

23. The Court of Appeal shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,)

A.D. 1877.

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the High Court of Admiralty, or the Court of Bankruptcy:

(2.) All jurisdiction and powers of the Court of Exchequer Chamber, including its appellate jurisdiction in appeals under the Registration of Voters Acts:

(3.) All jurisdiction and powers of the Court for Land Cases Reserved at Dublin under the provisions of the "Landlord and Tenant, Ireland, Act, 1870."

Appeals from High Court.

24. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as herein-after mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Transfer of pending business.

25. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the High Court of Justice and the Court of Appeal respectively shall cease to be exercised, except by the High Court of Justice and the Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by

A.D. 1877.

the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or the Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the High Court of Justice and the Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued as follows; (that is to say,) in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, or in the Court for Land Cases Reserved at Dublin, in and before the Court of Appeal; and, as to all other proceedings, in and before the High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be), down to the point at which the transfer takes place; and so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued in and before the said Courts respectively, either in the same or the like manner as they would have been continued in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the High Court of Justice and the Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

Rules as to exercise of jurisdiction.

26. The jurisdiction by this Act transferred to the High Court of Justice and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the

A.D. 1877.

respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Law and equity to be concurrently administered.

27. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respec-

tively, or any Judge thereof, might have granted in any suit, instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to

A.D. 1877.

apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Rules of law upon certain points.

28. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next hereinafter mentioned: Be it enacted as follows:

Administration of assets of insolvent estates

(1.) In the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867,

whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt in Ireland; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. This provision, however, is not to affect the enactments contained in the tenth section of the Real Property Limitation Act, 1874, when the same shall come into effect.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sign and cause to be served notices to quit, determine tenancies, or accept surrenders thereof and sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong

A.D. 1877.

relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Stipulations not of the essence of contracts.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have theretofore received in equity.

Injunctions and receivers.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made: and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether

the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by collisions at sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

(10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

Cases of conflict not enumerated.

(11.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III.

Sittings and Distribution of Business.

Abolition of terms.

29. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice, the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

Vacation.

30. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may, before the commencement of this Act, upon

A.D. 1877.

any report or recommendation of the Judges by whose advice the Lord Lieutenant is herein-after authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court herein-after mentioned, with the consent of the Lord Chancellor, from time to time make, revoke, or modify orders regulating the vacations to be observed by the High Court of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed.

Sittings in vacation.

31. Provision shall be made by Rules of Court for the hearing, in Dublin, during vacation, by Judges of the High Court of Justice and the Judges of the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of Judges of High Court on Circuit.

32. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other person or persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Dublin as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto. A.D. 1877.

Sittings for trial by jury in Dublin.

33. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Dublin, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Dublin, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the High Court of Justice. Subject to Rules of Court, the plaintiff shall, in the document by which each cause shall be commenced, name the county or place in which he proposes that the cause shall be tried or proceeding shall take place, but the Court or a Judge may, in their or his discretion, direct the same to be tried in any other county or place; and, so far as shall be reasonably consistent with the convenient and speedy discharge of the business, every issue and question of fact to be submitted to a jury shall be tried in the county or place where the cause of action shall have arisen. Any order of a Judge as to the place of trial of any such issue or question may be discharged or varied by a Divisional Court.

Whenever application shall be made for leave to serve any document by which a cause may be commenced upon a defendant resident out of the jurisdiction of the Supreme Court, whether by serving such defendant personally or by substituting service upon another person for him, the Court or Judge to whom such application shall be made shall have regard to the amount or value of the claim or property affected, and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence; and no such leave shall be granted without an affidavit stating the particulars necessary for enabling the Court or Judge to exercise a due discretion in the manner aforesaid.

Divisions of the High Court of Justice.

34. For the more convenient despatch of business in the High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court *five* Divisions consisting of such Judges respectively as herein-after mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

A.D. 1877.

(1.) One Division shall consist of The Lord Chancellor, who shall be President thereof, The Master of the Rolls, The Vice-Chancellor and the Judges of the Landed Estates Court;

(2.) One other Division shall consist of The Lord Chief Justice, who shall be President thereof, and the other Judges of the Court of Queen's Bench;

(3.) One other Division shall consist of The Lord Chief Justice of the Common Pleas, who shall be President thereof, and the other Judges of the Court of Common Pleas;

(4.) One other Division shall consist of The Lord Chief Baron of the Exchequer, who shall be President thereof, and the other Barons of the Court of Exchequer;

(5.) One other Division shall consist of the Judge of the Courts of Probate and for Matrimonial Causes and Matters;

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate and Matrimonial Division.

The Queen's Bench Division shall have not less than *four* Judges; the Common Pleas and Exchequer Divisions not less than *three* each; and the Probate and Matrimonial Division shall have *one* Judge.

Any vacancy at the time of the commencement of this Act in the office of Judge of any Court the jurisdiction of which is by this Act transferred to the High Court of Justice or the Court of Appeal, if such office be continued by this Act, may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Save as by this Act expressly provided, any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions, provided, that in the case of an existing Judge, such transfer shall not be without his own consent.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the Division to which the Judge whose place has become vacant belonged, and shall succeed to the duties of such Judge.

Rules of Court to provide for distribution of business.

35. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the

said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. In distributing the general business between the Queen's Bench, Common Pleas, and Exchequer Divisions, regard shall be had to any special jurisdiction vested in them respectively, so as to apportion the business fairly between them.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

36. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively:

(3.) All matters pending in the Landed Estates Court at the commencement of this Act:

(4.) All matters which would have been within the exclusive cognizance of the Landed Estates Court, or of any Judge or Judges thereof, if this Act had not passed:

(5.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership or other accounts;

The redemption or foreclosure of mortgages;

The raising of portions, or other charges on land;

The sale and distribution of the proceeds of property subject to any lien or charge;

The execution of trusts, charitable or private;

The rectification, or setting aside, or cancellation of deeds or other written instruments;

The specific performance of contracts between vendors and purchasers of land, including contracts for leases, and also the specific performance of any other contracts in respect of which a Court of Equity decrees performance;

The partition or sale of real estates;

The wardship of infants and the care of infants estates.

A.D. 1877.

All causes and matters included under the heads above numbered (3) and (4) shall be assigned to the Land Judges of the Chancery Division.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas if this Act had not passed.

Provided always, that if and whenever the said Division shall be engaged in the hearing or despatch of any business relating to a parliamentary election which would have been within the exclusive cognizance of the Court of Common Pleas, but only so long as there shall be but three Judges of the Common Pleas Division, the junior Puisne Judge for the time being of the Queen's Bench Division shall be empowered and bound to attend and take part in the hearing and despatch by the Common Pleas Division of such business, and shall, for all the purposes of such business, be a fourth member of the Common Pleas Division.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Probate and Matrimonial Division of the said Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Matrimonial Causes and Matters, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or of the

Court for Matrimonial Causes and Matters, if this Act had not passed. A.D. 1877.

Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.

37. Subject to any Rules of Court, and to the provisions herein-before contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such Division, and giving notice thereof to the proper officer of the Court: Provided, that

(1.) All interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; and

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions herein-before contained, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned; and

(3.) Every testamentary or matrimonial proceeding shall be commenced in the Probate and Matrimonial Division, and addressed to the Judge of that Division for the time being:

(4.) Every proceeding in any other matter within the exclusive jurisdiction of the Landed Estates Court before the passing

A.D. 1877.

or under the provisions of this Act shall be commenced in the Chancery Division and addressed to the Land Judges of that Division.

Power of transfer.

38. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Directions as to procedure in Landed Estates Court.

39. Every application to appoint a receiver over land, when such land is the subject of a proceeding before the Land Judges, shall be made to the Land Judge to whom such proceeding is attached. In any proceeding before a Land Judge, the Judge shall decide all controversies and questions as to the validity or effect of any deed, instrument, or contract affecting land or any charge or incumbrance thereon, or as to the construction or effect of any devise or bequest of any estate or interest in or of any charge or incumbrance upon, land, which it may be necessary to decide for the purpose of such proceeding, including the validity or effect of any lease or instrument of tenancy affecting land requisite to be ascertained for the due settlement of a rental; and shall take accounts of and administer the assets of any deceased person whenever it may be necessary for a distribution of the purchase money of any land sold before him, provided there shall not be then depending before any of the Judges of the High Court a suit for the administration of such assets; and it shall not be necessary to institute any other cause or matter for any of such purposes. The procedure in such cases shall be settled by Rules of Court, to be made by the Lord Chancellor, with the Land Judges, or either of them, and any person whether already a party to the proceeding or not, who shall have been duly served with notice in writing pursuant to any Rule of Court or order of the Court shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his claim or defence as if he had duly sued or been sued in a suit instituted for the purpose of deciding any such question or controversy.

Sittings in Dublin and on Circuits.

40. Subject to any arrangements which may be from time to time made by agreement between the Judges of the said High Court, the sittings for trials by jury in Dublin, and the sittings of Judges of the said High Court under Commissions of Assize,

Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission any Ordinary Judge of the Court of Appeal, or any Judge of the Chancery Division appointed *after the first of January one thousand eight hundred and seventy-five*, or any of Her Majesty's Serjeants-at-Law, or Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court: And any person not a Judge of the High Court who shall be sent as a Commissary shall be paid the same amount and in the same manner as such person would have been paid if before the passing of this Act he had been sent as a Commissary, and if he shall be sent in place of a Judge, who, under the provisions of this Act, was bound to go circuit without payment in respect thereof in addition to his salary, then *one hundred and fifty pounds* shall be deducted from the salary of such Judge: Provided also, that, any law or custom to the contrary, it shall not be necessary in any commission for the trial of crimes and offences in the county of the city and county of Dublin to nominate more than one Judge to preside, nor for more than one Judge to preside under any commission existing at the commencement of this Act.

Rota of Judges for election petitions.

41. The Judges to be placed on the rota for the trial of election petitions for Ireland in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be the Judges upon the rota for the trial of such petitions during the then current year shall continue upon such rota for the same period, and in the same manner as if this Act had not passed.

Powers of one or more Judges not constituting

42. Any Judge of the High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in

A.D. 1877.

a Divisional Court.

all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Divisional Courts of the High Court of Justice.

43. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by *two* or more of the Judges thereof. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

44. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all such business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, as, according to the practice now existing in the Superior Courts of Common Law in Ireland, would have been proper to be transacted or disposed of by the Court sitting in Banco, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's

Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court of Justice, and in case of difference among them, in such manner as the majority of the said Judges with the concurrence of either the Lord Chancellor or the Lord Chief Justice shall determine.

Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.

45. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery Division of the said High Court, or out of any testamentary or matrimonial cause or proceeding assigned to the Probate and Matrimonial Division, shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate, and the Court for Matrimonial Causes and Matters respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which, after the commencement of this Act may be commenced in the Chancery Division of the said High Court, shall be assigned to one of the Judges thereof, in the same manner as heretofore: Provided that (subject to any Rules of Court, and to the power of transfer) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the Court of Probate or the Court for Matrimonial Causes and Matters, shall be assigned to the Judge of the Probate and Matrimonial Division for the time being, and all matters within the exclusive jurisdiction of the Landed Estates Court shall be assigned to the Land Judges.

Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.

46. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or of the Court of Appeal, or may direct any case, or point in a case, to be argued before any such Court: and any such Court shall have power to hear and determine any such case or point so reserved or so directed to be argued:

Provided that nothing in this Act, or in any rule made under its provisions, shall take away or prejudice the right of any party to

A.D. 1877.

any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law and as to the evidence applicable to such issues: Provided also, that such right may be enforced by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

Land cases reserved.

47. From and after the commencement of this Act, any person aggrieved by any decision or order upon any question of law, made by any judge or judges of assize under the Landlord and Tenant (Ireland) Act, 1870, or, in the case of the county or the county of the city of Dublin, made by the judges mentioned in that Act in that behalf, may require the judge or judges making such decision or order to reserve such question of law by way of case stated for the consideration of the Court of Appeal; and the same shall thereupon be reserved accordingly in such manner and form as shall be prescribed by rules made in pursuance of the thirty-first section of the said Act.

Provision for Crown cases reserved.

48. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the "further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such Chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Motions for new trials to be heard by Divisional Courts.

49. In proceedings in the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict

for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

What orders shall not be subject to appeal.

50. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, being costs which by law are left to the discretion of the Court, shall be subject to any appeal, unless by leave of the Court or Judge making such order.

Costs.

51. Subject to the provisions of this Act and of Rules of Court, the costs of and incident to every proceeding in the High Court shall be in the discretion of the Court, but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted on in Courts of Equity: Provided, that the costs of every action, question, and issue tried by a jury shall follow the event, unless, upon application made, the Judge at the trial or the Court shall for good cause shown otherwise order, and any order of a Judge as to such costs may be discharged or varied by a Divisional Court.

As to discharging orders made in Chambers.

52. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as to costs, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

Provision for absence or vacancy in the office of a Judge.

53. In case in the Chancery Division of the High Court of Justice from the amount of business, or in any Division of the said Court from the absence of a Judge or Judges through illness, it shall be found expedient that some or one of the Ordinary Judges of the Court of Appeal appointed after the passing of this Act should assist in transacting the business of such Division, it shall be lawful for them and him so to do; and while so sitting and acting such Judge or Judges shall have all the power, jurisdiction, and authority of a Judge or Judges of the said High Court of Justice.

A.D. 1877.

Power of a single Judge in Court of Appeal.

54. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than *three* Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than *two* Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Any direction incidental to a proceeding in appeal, not involving the hearing of such decrees, judgments, or orders, final or interlocutory, as aforesaid, may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

Constitution of Court of Appeal when hearing Appeals.

55. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made in a cause or matter heard by himself either sitting alone or with other Judges.

Arrangements for business of Court of Appeal.

56. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal shall be made by and under the direction of the President and the other Judges of the said Court of Appeal.

PART IV.

Trial and Procedure.

References and assessors.

57. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, the High Court or the Court of Appeal may, in any civil cause or matter as aforesaid in which it may think expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special Referees or assessors shall be determined by the Court.

Power to direct trials before Referees.

58. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before a special Referee to be agreed on between the parties, or in default of agreement

to be appointed by the Court or Judge. All such trials before Referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

Power of Referees and effect of their findings.

59. In all cases of any reference to or trial by Referees under this Act the Referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Powers of Court with respect to proceedings before Referees.

60. With respect to all such proceedings before Referees and their Reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court, with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Amendment Act (Ireland), 1856.

33 & 34 Vict. c. 109. ss. 5 and 6 to extend to actions in High Court.

61. The provisions contained in the fifth and sixth sections of the Common Law Procedure Amendment Act, Ireland, 1870, shall apply to all actions, including ejectments, commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a Civil Bill Court.

Provision as to making of Rules of Court before or after the commencement of the Act.

62. The Lord Lieutenant may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, the Lord Justice of Appeal, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any three of them, and of the other Judges of the several Courts intended to be united and consolidated by this Act, or of a majority of such other Judges, make rules, to be styled Rules of Court, for carrying this Act into effect, and in particular for all or any of the following matters; that is to say,

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal, including all matters connected with writs, forms of actions, parties to actions, evidence, and mode and place of trial; and

(3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the

A.D. 1877.

duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein (including the costs to be allowed to solicitors of the Supreme Court in respect of business transacted in or before any of such Courts or the offices thereof,) or relating to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively, for which provision is not expressly made by this Act; and

(4.) For prescribing, regulating, or doing anything which under this Act may be prescribed, regulated, or done by Rules of Court.

From and after the commencement of this Act, the Lord Lieutenant may at any time, with the concurrence of a majority of the Judges of the Supreme Court present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), by Order in Council alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in the Lord Lieutenant on the recommendation of the Judges herein-before specified before the commencement of this Act.

All Rules of Court made in pursuance of this part of this Act shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this part of this Act, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after the time when they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this Act.

The powers to make Rules of Court contained in this section are not to affect special provisions in this Act enabling rules to be made in particular instances.

Circuits and assizes.

63. The Lord Lieutenant, may from time to time, after the commencement of this Act, by Order in Council, rearrange the circuits or reduce their number, and direct what counties and towns shall be upon each circuit.

Winter assizes.

64. "The Winter Assizes Act, 1876," (excepting section 5,) shall from and after the passing of this Act extend to Ireland, and all the powers thereby vested as to England in Her Majesty shall as to Ireland be vested in and may be exercised by the Lord Lieutenant, by and with the advice and consent of the Privy Council in Ireland, and every order of the Lord Lieutenant in Council made in pursuance of the said Act, and published in the Dublin Gazette, shall have the like effect in Ireland as an order in Council made in pursuance of the said Act would have in England, and provision may

be made by such order for the hearing and despatch at any winter assizes, as well of criminal business as also of such civil business as may be by such order prescribed.

Rules of Courts of Probate, and for Matrimonial Causes, to be Rules of the High Court.

65. All Rules and Orders of Court which shall be in force in the Court of Probate, and the Court for Matrimonial Causes and Matters respectively, at the time of the commencement of this Act, except so far as they shall by Rules of Court be expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been Rules of Court under this Act.

Criminal procedure, subject to future Rules, to remain unaltered.

66. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

In cases on the Crown side of the Queen's Bench Division a writ of error to the House of Lords may issue in like manner and subject to like conditions and permission and in respect of like proceedings as such writ would have issued from the Court of Queen's Bench, if this Act had not been passed.

Act not to affect rules of evidence.

67. Nothing in this Act, or in any Rules of Court to be made by virtue hereof, save so far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

68. Save as by this Act, or by any Rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or any Rules of Court, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

Additional power as to regulation

69. Where any provisions in respect of the practice or procedure of any courts, the jurisdiction of which is transferred by this Act

A.D. 1877.

of practice and procedure by Rules of Court.

to the High Court of Justice or the Court of Appeal are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

70. Every General Rule, Order in Council, Rule of Court, and General Order required by this Act to be laid before each House of Parliament, shall be so laid within *forty* days next after it is made, if Parliament is then sitting, or if not, within *forty* days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent *forty* days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Councils of Judges to consider procedure and administration of justice.

71. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the Court of Appeal: And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

A.D. 1877.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

72. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the High Court of Justice and the Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the High Court of Justice: Provided always, that any provisions of such Acts inconsistent with the provisions of this Act shall be and the same are hereby repealed.

PART V.

Officers and Offices.

Transfer existing staff of officers to Court of Judicature.

73. The Receiver Master in Chancery, and the Masters in the Courts of Common Law, the Clerk of the Crown and Hanaper, the Clerk of the Crown of the Court of Queen's Bench, and the Taxing Masters, Secretaries, Registrars, Clerk of Records and Writs, Examiner in the Court of Chancery, Registrar of the consolidated Nisi Prius Court, Clerks of the Rules and Pleadings and Record Assistants, Chief and other Clerks, Commissioners to take oaths or affidavits, or the acknowledgment of deeds by married women, Stamp Distributors, Messengers, Court and Office Keepers, Hall Porters, Tipstaves, Criers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of or connected with any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, also all persons who were officers of or

A.D. 1877. connected with the late Masters of the Court of Chancery, or their offices, shall, from and after the commencement of this Act, be attached to the Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed; any such officer who is removable by the Court to which he is now attached shall be removable by the Court or Division to which he shall be attached under this Act, or by the majority of the Judges thereof, for the same causes as heretofore.

Provided, however, that the existing Third Assistant in the Writ and Seal Office and the existing Clerk of Errors shall not be entitled to the benefit of this provision, and shall cease to be officers of the High Court upon an order of the Lord Chancellor to that effect without being entitled to compensation.

The existing Registrars, Assistant Registrars, and Clerks to the Registrars in the Chancery Registrars office, and also the existing officers of the three law courts, shall, so long as they continue officers of the Courts, retain any right of succession secured to them by Act of Parliament, so as to entitle those who are thus secured in their respective offices, or in any substituted offices, to the succession to appointments with similar or analogous duties and with equivalent salaries.

All officers who at the time of the commencement of this Act shall be attached to the Court of Chancery, or any Judge or Master thereof, shall be attached to the Chancery Division of the High Court of Justice; all officers who at the time of the commencement of this Act shall be attached to the Landed Estates Court, or the Judges thereof, shall be attached to the Land Judges of the Chancery Division; all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Probate and the Court for Matrimonial Causes and Matters shall

be attached to the Probate and Matrimonial Division of the said High Court. A.D. 1877.

All clerks and other officers attached to any existing Judges who under the provisions of this Act shall become a Judge of the High Court of Justice or of the Court of Appeal shall continue attached to such Judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto, and shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed.

The distribution of business among the officers so attached to the said respective Divisions, the duties to be discharged by them, and any re-arrangement connected therewith shall be regulated, controlled, and directed, in the case of the Chancery Division as to the Landed Estates Court officers by the Lord Chancellor with the concurrence of the Land Judges, or one of them, and as to all other officers of the said Chancery Division by the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor, or any two of them, of whom the Lord Chancellor shall be one; in the case of the officers of the Courts of Probate and for Matrimonial Causes and Matters by the Lord Chancellor and the Judge of the Probate and Matrimonial Division; and in the case of the officers of the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, by the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

If the services of any existing officer attached in manner aforesaid to a Division shall not be required in the Division to which he is attached, it shall be lawful for the Lord Chancellor, with the concurrence of the other Presidents of Divisions, or one of them, by order, to transfer such officer to some other office of the High Court of Justice, or some Division thereof, subject however to the conditions herein-after imposed as to the nature of the duties he is to perform.

The following offices shall at dates to be fixed by the Lord Chancellor, with the concurrence of the Treasury, but within *two* years from the commencement of this Act, be consolidated in manner following: the Taxing Offices of the Common Law Courts and of the Landed Estates Court with the Taxing Office of the Court of Chancery, so as to have but one Taxing Office for the Supreme Court, and the several Courts and Divisions thereof; the Office of Accountant in the Landed Estates Court with the Office of

A.D. 1877.

Accountant-General in the Court of Chancery, so as to have but one accounting department for the Supreme Court and all courts and divisions thereof; the Writ and Seal Office of the Law Courts with the Record and Writ Office in Chancery, so as to have but one office out of which all writs and summonses to commence proceedings in the High Court or any Division thereof may issue, and in which the records of all proceedings therein may be preserved; and the Notice Office of the Landed Estates Court with the Notice Office of the Court of Chancery.

Subject to the provisions in this Act as to tenure and salary of existing officers, and as to the discharge by them of analogous duties only, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may, by order, consolidate any other offices of the courts whose jurisdiction is hereby transferred to the Supreme Court in any cases where the union of the existing courts into one Supreme Court shall render it no longer necessary or expedient to retain such offices separate.

The distribution of business in the offices so united and consolidated, and the duties to be discharged by the officers thereof, shall be regulated and directed by the orders and under the control of the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

All other officers and persons (if any) hereby attached to the Supreme Court, for the regulation of whose duties provision has not been herein-before made, shall have their duties defined by the Lord Chancellor.

An existing officer hereby attached to the Supreme Court or any Court or Division thereof shall not be required to discharge any duties which are not either the same as or similar or analogous to those which he performed immediately before the commencement of this Act; and in case of question as to the duties proposed to be imposed upon an officer being similar or analogous, the Lord Chancellor shall decide, having regard to the rank and position previously held by such officer.

The Lord Chancellor may, with the consent of the Treasury, increase the salary of any officer who is by this Act attached to the Supreme Court, or any Court, Division, or Judge thereof, and whose duties are increased by reason of the passing of this Act.

In case it shall appear to the Lord Chancellor that, by reason of the consolidation or abolition of offices under the provisions of this Act,

A.D. 1877.

the continuance of the services of any officer holding during good behaviour, or during good behaviour subject to removal for cause by some Court or Judge, is unnecessary, the Lord Chancellor may, with the concurrence of the Treasury, make arrangements for the release of such officer from his duties, and thereupon it shall be in the power of the Treasury to award to such officer such compensation as, having regard to his period of service, to the tenure of the office held by him, or to any rights of succession to a position of higher rank and emolument in his office, which may have been conferred upon him by statute, the Treasury shall consider just and reasonable: Provided always, that the sum so to be awarded shall not exceed *three fourth* parts of the salary and emoluments of the office held by such person, nor be less than *one half*, nor, when the length of service exceeds *fifteen* years, be more than *one thirtieth* part of such salary and emoluments in respect of each year of completed service in an office possessing the statutable privileges above referred to: Provided also, that no such officer appointed before the passing of this Act shall be so released without his consent.

In every case in which the compensation awarded under such special circumstances, affecting the tenure or position of an officer as are above referred to, shall exceed the amount which might be awarded under the provisions of the seventh section of the Superannuation Act, 1859, without a special minute being laid before Parliament, the compensation shall be awarded by special minute of the Treasury, stating the reasons for it, and a copy of the minute shall be laid before Parliament within *fourteen* days of the date of the minute, if Parliament be then sitting, or if not, then within *fourteen* days of its next meeting.

Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, and whose emoluments or statutory rights of promotion or succession are affected by the passing of this Act, shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Appointment of future officers of Supreme Court.

74. Subject to the provisions in this Act contained as to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the

A.D. 1877.

concurrence of the Treasury, shall within *two* years from the commencement of the Act, determine what officers, clerks, or other persons holding subordinate positions, requisite for the permanent organisation of the official staff of the Supreme Court, and every court and division thereof, shall be retained or employed; and may, with the like concurrence, abolish any unnecessary office, or reduce, or in case of additional duties increase, the salary of an office, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge.

When a vacancy occurs in any office after the passing of this Act, an appointment shall not be made thereto for the period of *one month* without the assent of the Lord Chancellor given with the concurrence of the Treasury; and further the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the *first day of December one thousand eight hundred and seventy-nine*, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office.

Subject to the provisions of this Act preserving their patronage to existing Judges, all offices which may not be abolished in manner aforesaid shall continue, and shall when vacant be filled up in manner following:

All officers attached to the High Court, or the Chancery Division thereof, who have been heretofore appointed by the Master of the Rolls or Vice-Chancellor, shall continue, while so attached, to be appointed by the Master of the Rolls and Vice-Chancellor and their successors respectively in the same manner and on the same conditions and occasions as heretofore.

All officers of the Chancery Division attached to the Land Judges, heretofore appointed by such Judges, or who under the provisions of this Act shall be attached to the Land Judges, shall be appointed by them with such approval as heretofore.

All other officers attached to the Divisions of the High Court shall be appointed for each such Division by the President thereof.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Subject to these provisions, all officers assigned to perform duties with respect to the Supreme Court of Judicature generally, or attached to the High Court of Justice generally, or the Court of Appeal, and all Commissioners to take oaths or affidavits in the Supreme Court, or for whose appointment other provision is not expressly made in this section, shall be appointed by the Lord Chancellor.

Any statutable power existing at the passing of this Act to enable any officer or officers of any court to appoint to any office, or to employ any persons in duties appertaining to any office, is hereby repealed, and the right of appointing to such offices, if they shall be continued, shall vest, in the case of offices attached to Divisions, in the Presidents of the Divisions, and in all other cases in the Lord Chancellor, but no vacancy in any of such offices shall be filled without the concurrence of the Treasury.

Any qualification required for appointment to any office by any statute in force at the commencement of this Act shall continue.

Any officer of the Supreme Court of Judicature, or of the Court of Appeal, or of the High Court, or of any Division or Judge thereof (other than such officers attached to the person of a Judge as are removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court of Judicature, and of the Court of Appeal and of the High Court of Justice, over all or any of the officers attached to the said Courts, or any of them generally, may be exercised by the Lord Chancellor, and over the officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

Powers of Commissioners to administer oaths.

75. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

Receiver Master.

76. After the passing of this Act no successor to the existing Receiver Master shall be appointed; and it shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor, to release the existing Receiver Master from the further discharge of his duties in the same manner, and upon the same terms, as the Lord Chancellor was empowered to release the other Masters by the Chancery (Ireland) Act, 1867; and upon the death, resignation, or release of such existing Receiver Master, the powers and duties in lunacy matters vested in and performed by the Receiver Master other than those connected with the management of land shall be exercised and performed by the Lord Chancellor, and the officers attached to him according to the course of procedure in the Chancellor's court and

A.D. 1877.

offices, and the powers and duties vested in and performed by such Receiver Master in reference to the management of landed estates, and the supervision and control of receivers over the same shall be exercised by the Land Judges, and all matters and business which shall be then pending in the office of such Receiver Master in reference to receivers appointed over any estate by or in pursuance of any order of the Court of Chancery, or any of the Judges or Masters thereof, or of the Lord Chancellor entrusted by the Queen's Sign Manual with jurisdiction in Lunacy, and the accounting of such receivers and the letting and management of the estates over which any such receiver shall have been appointed shall be thereupon transferred to the said Land Judges, and shall thenceforth, subject to any Rules of Court to be made by the Lord Chancellor, with the concurrence of the Land Judges or either of them, be prosecuted and conducted before such Judges or one of them in the same manner as the same would have been prosecuted or conducted before the Receiver Master if this Act had not been passed; and all matters and business, other than as aforesaid and other than the audit of public accounts, which shall be then pending in the office of such Receiver Master, shall, subject to Rules of Court and to the power of transfer, be distributed among the Judges of the Chancery Division of the said High Court as the Lord Chancellor, with the concurrence of any two of the Judges of the said Division, shall direct.

Any references to appoint receivers over land which may be made by any Judge of the High Court of Justice, including the Lord Chancellor entrusted in Lunacy as aforesaid, after the death, resignation, or release of said Receiver Master shall be made to the said Land Judges, or one of them, and the accounting of the receivers appointed either under such references or by the Land Judges themselves, or by any other Judge, and the control of such receivers, and the management of the estates over which they shall be appointed, shall be exercised by the Land Judges.

Provided always, that nothing herein contained shall prevent any Judge, or the Lord Chancellor intrusted in Lunacy as aforesaid, from himself appointing a receiver over land, or over personal estate other than land, in any case in which he shall think it expedient to do so, and in any such case the Judge may, if he shall think it expedient, and in all cases in which he shall appoint a receiver over personal estate other than land he shall, by order direct that all subsequent proceedings with regard to such receiver shall be taken in his own Court, and thereupon all such proceedings shall be taken before such Judge or his officers.

A.D. 1877.

Appeals from any orders made by the said Land Judges with regard to any matters connected with Receivers or the management of land shall lie to the Court of Appeal and not to the Court or Judge by whom reference to them to appoint or take the accounts of a Receiver shall have been made, and no order so made shall require to be confirmed by such last-mentioned Court or Judge.

Subject to any Rules of Court and unless the Court or Judge by whom any such reference shall be made shall otherwise order, all sums of money received by any receiver shall, after payment of or providing for the necessary outgoings of and allowances in respect of the estate over which he shall be so appointed, be lodged to the credit of the cause or matter in which the reference to the Land Judges shall have been made, or shall be paid by said Receiver according to the orders of the Judge to whom such cause or matter is attached.

Subject to Rules of Court, references to the said Land Judges shall be distributed between them as the Lord Chancellor, with the concurrence of the said Judges, or either of them, shall from time to time by any regulation direct.

The jurisdiction to audit certain public accounts, and every other jurisdiction (if any) not in reference to causes, matters, or proceedings in Chancery, now vested in the Receiver Master, shall, unless Parliament shall otherwise direct, after the death, resignation, or release of the existing Receiver Master, vest in and be exercised by the Local Government Board for Ireland.

The officers connected with the office of Receiver Master shall be transferred and attached to the Land Judges, and be employed in duties similar or analogous to those which they at present discharge, and they shall hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions as if this Act had not been passed.

Provided also, that all the powers relating to existing officers of the courts and to the reorganization and new arrangement of offices herein contained shall also apply to the officers of the Receiver Master.

General orders shall be made by the Lord Chancellor with the concurrence of the Land Judges, or either of them, to regulate the practice and procedure connected with the matters the subject of this section.

Provided always, that no Land Judge appointed before *the first of January one thousand eight hundred and seventy-five* shall be bound to discharge the duties imposed upon the Land Judges by this section,

A.D. 1877.

The Lord Lieutenant, with the consent of the Lord Chancellor, may, if he shall think fit before the commencement of this Act, exercise the powers by this section conferred with respect to the release of the Receiver Master from the further discharge of his duties, and in such case or in case of vacancy in the office before the commencement of this Act, the several provisions in this section contained shall take effect, and such of the same as relate to the Land Judges shall be applicable and shall apply to the Judges of the Landed Estates Court, and such as relate to the Judges of the Chancery Division shall be applicable and shall apply to the Judges of the Court of Chancery.

Salaries and pensions of officers.

77. *There shall be paid to every salaried officer appointed in pursuance of this Act such salary out of moneys provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.*

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Clerks of Assize and Nisi Prius.

78. Clerks of Assize and Nisi Prius on circuit may be appointed and paid in the same manner as heretofore. Clerks of Nisi Prius in Dublin may be appointed by the existing Chief Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions, and shall be paid as heretofore; but such right of appointment shall not be continued to their successors, and other provisions shall be made for the discharge of the duties now discharged by such clerks, under the provisions of this Act relating to future offices of the High Court.

Solicitors and attorneys.

79. From and after the commencement of this Act, all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Court of Judicature, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would

have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Court of Judicature and shall be admitted by the Lord Chancellor, and shall, so far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Court of Judicature; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

PART VI.

Jurisdiction of Inferior Courts.

Rules of law to apply to inferior Courts.

80. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts.

PART VII.

Miscellaneous Provisions.

Transfer of books and papers to Court of Judicature.

81. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court of Judicature, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Court making such order.

Saving as to circuits, &c.

82. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of

A.D. 1877.

Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Court of Judicature who are now officers of the Courts of Common Law in Ireland, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to Lord Chancellor.

83. This Act, except so far as herein is expressly directed, shall not affect the office of Lord Chancellor, nor the rank, salary, or pension attached to such office; and the officers in the Lunacy Department, and the officers personally attached to or connected with the Lord Chancellor, shall continue attached to him in the same manner as if this Act had not passed; and all duties which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Court of Judicature, and by his successors. It shall be in the power of the Lord Chancellor, with the concurrence of the Treasury, to abolish, or alter the duties and designation of any offices whether in the Lunacy Department or attached to himself, and to fix the salaries of such as shall be retained, but so that no existing officer holding office during good behaviour shall receive a less salary than heretofore, or hold office otherwise than he did before.

Provisions as to Great Seal being in commission.

84. When the Great Seal of Ireland is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

PART VIII.

Fixing and collection of fees in High Court and Court of Appeal.

85. The Lord Chancellor, with the advice and consent of the other Presidents of the Divisions of the High Court, or any one of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages to be taken in the High Court of Justice or in the Court of Appeal,

or any office connected therewith, or by any officer of those courts or the Lord Chancellor, or other judge of those courts which officer is paid wholly or partly out of public moneys, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages, and appoint new fees and per-centages, to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and they shall be taken by stamps, or in such other manner, and subject to such regulations as to the mode of taking and accounting for the same, as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

(1.) Any document which ought to bear a stamp under this Act, or under any order made in pursuance of this Act, shall not be of any validity unless and until it is properly stamped, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed, and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if such document had been properly stamped in the first instance.

(2.) The Commissioners of Inland Revenue shall keep a separate account of any money received in respect of stamps under any orders made in pursuance of this Act, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.

(3.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding *seven* years, or to imprisonment with or without hard labour for a term not exceeding *two* years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but subject to

A.D. 1877.

the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken and accounted for in the existing manner.

PART IX.

Unclaimed Dividends in Bankruptcy.

Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

86. From and after the passing of this Act, sections eighty-four, and two hundred and ninety-seven of the Irish Bankrupt and Insolvent Act, 1857, shall be and the same are hereby repealed, and the following provisions shall thereupon be in force and have effect:

As soon as may be after the passing of this Act, the Governor and Company of the Bank of Ireland shall, upon an order of the Lord Chancellor to be made in that behalf, transfer to the account of the Commissioners for the Reduction of the National Debt at the Bank of England, all Government securities and cash standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankruptcy and Insolvent Act, 1857.

As soon as the said Government securities have been so transferred, the Treasury shall by warrant direct the Governor and Company of the Bank of England to cancel such securities in their books.

All unclaimed dividends and all moneys unclaimed, the produce of any bankrupt's estate, which shall from time to time after the passing of this Act be paid into, or transferred to the credit of the "Unclaimed Dividend Account," under the provisions of section 295 of the Irish Bankrupt and Insolvent Act, 1867, shall after the expiration of five years from the time at which the same have been respectively paid into, or transferred to the said account, be paid to the account of the Commissioners for the Reduction of the National Debt, in such manner as the Treasury may direct. The Commissioners for the Reduction of the National Debt shall apply all cash transferred to their account in pursuance of this section in reduction of the National Debt in the same manner as the moneys issued to them under the Sinking Fund Act, 1875.

Where any Court having jurisdiction in the matter of bankruptcy is satisfied that any person claiming is entitled to any dividend or other payment out of the moneys carried to the account of the said Commissioners under the provisions of this section, such Court may

order payment of the same in like manner as it might have done if the same had not been carried to the said last-mentioned account. A.D. 1877.

All salaries, allowances, and expenses before the passing of this Act charged on and payable out of the said Unclaimed Dividend Account shall from and after the passing of this Act be paid out of moneys to be provided by Parliament for such purpose.

PART X.

Final Appeal.

Final appeal to the House of Lords.

87. All decisions, judgments, decrees, or orders of the Court of Appeal shall be subject to appeal to the House of Lords, in the cases and under the conditions in and under which the like decisions, decrees, judgments, or orders of the Court of Appeal in Chancery in Ireland, or of the Court of Exchequer Chamber in Ireland, would have been subject to appeal to the House of Lords or to the Queen in Council if this Act had not been passed, or as may be directed by any Act of Parliament affecting the Appellate jurisdiction of the House of Lords, or any powers therein contained.

Except as herein-before provided with respect to error in certain cases on the Crown side of the Queen's Bench Division, error or appeal from any judgment, decree, or order, subsequent to the commencement of this Act, of the High Court of Justice, or any Division or Judge thereof, or of the Courts of Admiralty or Bankruptcy, or any Judge of the same respectively, may be brought only to the Court of Appeal constituted by this Act, and not directly to the House of Lords or Queen in Council, any previous law or usage to the contrary notwithstanding.

Nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords, or to the Queen in Council, from any prior judgment or order of any Court, whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

Supreme Court of Judic
ture (Ireland).

A

B I L L

For the constitution of a Supreme Cour
Judicature, and for other purposes rela
to the better Administration of Justice
Ireland.

(*Prepared and brought in by Mr. Solicitor-General for Ireland and Sir Michael Hicks-Beach.*)

Ordered, by The House of Commons, *to be Printed,*
12 *February* 1877.

[Bill 66.]

Under 8 *oz.*

Supreme Court of Judicature (Ireland) Bill.

[AS AMENDED IN COMMITTEE.]

ARRANGEMENT OF CLAUSES.

Preliminary.

Clauses.

1. Short title.
2. Commencement of Act.
3. Interpretation of terms.

PART I.

Constitution and Judges of Court of Judicature.

4. Union of existing Courts into one Supreme Court of Judicature.
5. Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.
6. Constitution of High Court of Justice in Ireland.
7. As to Judges of Landed Estates Court.
8. As to Judges of Court of Bankruptcy.
9. Existing Judge of Admiralty.
10. Constitution of Court of Appeal.
11. Vacancies by resignation of Judges and effect of vacancies generally.
12. Qualifications of Judges.
13. Tenure of office of Judges, and oaths of office.
14. Precedence of Judges.
15. Saving of rights and obligations of existing Judges.
16. Provisions for extraordinary duties of Judges of the former Courts.
17. Salaries of certain existing Judges.
18. Salaries of future Judges.
19. Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.
20. Salaries and pensions how to be paid.

PART II.

Jurisdiction and Law.

Clauses.

21. Jurisdiction of High Court of Justice.
22. Jurisdiction not transferred to High Court.
23. Jurisdiction transferred to Court of Appeal.
24. Appeals from High Court.
25. Transfer of pending business.
26. Rules as to exercise of jurisdiction.
27. Law and equity to be concurrently administered.
28. Rules of law upon certain points. Administration of assets of insolvent estates. Statutes of Limitation inapplicable to express trusts. Equitable waste. Merger. Suits for possession of land by mortgagors. Assignment of debts and choses in action. Stipulations not of the essence of contracts. Injunctions and receivers. Damages by collisions at sea. Infants. Cases of conflict not enumerated.

PART III.

Sittings and Distribution of Business.

29. Abolition of terms.
30. Vacation.
31. Sittings in vacation.
32. Jurisdiction of Judges of High Court on Circuit.
33. Sittings for trial by jury in Dublin.
34. Divisions of the High Court of Justice.
35. Rules of Court to provide for distribution of business.
36. Assignment of certain business to particular Divisions of High Court, subject to Rules.
37. Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.
38. Power of transfer.
39. Directions as to procedure in Landed Estates Court.
40. Sittings in Dublin and on Circuits.
41. Rota of Judges for election petitions.
42. Powers of one or more Judges not constituting a Divisional Court.
43. Divisional Courts of the High Court of Justice.

Clauses.

44. Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.
45. Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.
46. Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.
47. Land cases reserved.
48. Provision for Crown cases reserved.
49. Motions for new trials to be heard by Divisional Courts.
50. What orders shall not be subject to appeal.
51. Costs.
52. As to discharging orders made in Chambers.
53. Provision for absence or vacancy in the office of a Judge.
54. Power of a single Judge in Court of Appeal.
55. Constitution of Court of Appeal when hearing Appeals.
56. Arrangements for business of Court of Appeal.

PART IV.

Trial and Procedure.

57. References and assessors.
58. Power to direct trials before Referees.
59. Power of Referees and effect of their findings.
60. Powers of Court with respect to proceedings before Referees.
61. 33 & 34 Vict. c. 109. ss. 5 and 6 to extend to actions in High Court.
62. Provision as to making of Rules of Court before or after the commencement of the Act.
63. Circuits and Assizes.
64. Winter Assizes.
65. Rules of Courts of Probate and for Matrimonial Causes to be Rules of the High Court.
66. Criminal procedure, subject to future Rules, to remain unaltered.
67. Act not to affect rules of evidence.
68. Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

Clauses.

69. Additional power as to regulation of practice and procedure by Rules of Court.

70. Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

71. Councils of Judges to consider procedure and administration of justice.

72. Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

PART V.

Officers and Offices.

73. Transfer of existing staff of officers to Court of Judicature.

74. Appointment of future officers of Supreme Court.

75. Powers of Commissioners to administer oaths.

76. Receiver Master.

77. Salaries and pensions of officers.

78. Clerks of Assize and Nisi Prius.

79. Solicitors and attorneys.

PART VI.

Jurisdiction of Inferior Courts.

80. Rules of law to apply to inferior Courts.

PART VII.

Miscellaneous Provisions.

81. Transfer of books and papers to Court of Judicature.

82. Saving as to circuits, &c.

83. Saving as to Lord Chancellor.

84. Provisions as to Great Seal being in commission.

PART VIII.

85. Fixing and collection of fees in High Court and Court of Appeal.

PART IX.

Unclaimed Dividends in Bankruptcy.

Clauses.

86. Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

PART X.

Final Appeal.

87. Final appeal to House of Lords.

Schedule.

A

B I L L

[AS AMENDED IN COMMITTEE]

FOR

The constitution of a Supreme Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland. A.D. 1877.

WHEREAS it is expedient to constitute a Supreme Court of Judicature, and to make provision for the better administration of justice, in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act (Ireland), 1877."

Commencement of Act.

2. This Act, except where otherwise expressly provided, shall commence and come into operation on the first day of January one thousand eight hundred and seventy-eight.

Interpretation of terms.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several expressions herein-after mentioned shall have, or include, the meanings following; (that is to say,)

"High Court of Chancery" and "Court of Chancery" respectively shall mean the High Court of Chancery in Ireland, and shall include the Lord Chancellor.

"Court of Queen's Bench" shall mean the Court of Queen's Bench in Ireland.

"Court of Common Pleas" shall mean the Court of Common Pleas in Ireland.

"Court of Exchequer" shall mean the Court of Exchequer in Ireland.

"High Court of Admiralty" shall mean the High Court of Admiralty of Ireland.

A.D. 1877.

"Court of Probate" shall mean the Court of Probate in Ireland.

"Court for Matrimonial Causes and Matters" shall mean the Court for Matrimonial Causes and Matters in Ireland.

"Landed Estates Court" shall mean the Landed Estates Court, Ireland.

"Court of Bankruptcy" shall mean the Court of Bankruptcy in Ireland.

"Lord Lieutenant" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.

"Lord Chancellor" shall mean Lord Chancellor of Ireland, and shall include Lords Commissioners and Lord Keeper of the Great Seal of Ireland.

"The Lord Chief Justice" shall mean the Lord Chief Justice of Ireland.

"Master of the Rolls" shall mean the Master of the Rolls in Ireland.

"Lord Justice of Appeal" shall mean the Lord Justice of Appeal in Chancery in Ireland.

"Vice-Chancellor" shall mean the Vice-Chancellor of Ireland.

"High Court" shall mean Her Majesty's High Court of Justice in Ireland established by this Act.

"Court of Appeal" shall mean Her Majesty's Court of Appeal in Ireland established by this Act.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by or in the name of the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by cause, action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

"Registration of Voters Acts" shall mean the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, and all other Acts or parts of Acts relating to the registration or qualification of persons entitled to vote at the election of members to serve in Parliament for Ireland.

"Land" shall have the same meaning as in the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-two, intituled "An Act to facilitate the sale and transfer of land in "Ireland."

"Officers" shall include "clerks."

PART I.

Constitution and Judges of Court of Judicature.

Union of existing Courts into one Supreme

4. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery, the Court of Queen's Bench, the

A.D. 1877.

Court of Judicature.

Court of Common Pleas, the Court of Exchequer, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in Ireland.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

5. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice in Ireland," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal in Ireland," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution of High Court of Justice in Ireland.

6. Her Majesty's High Court of Justice in Ireland shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the Vice-Chancellor, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, the Judge of the Court of Probate and of the Court for Matrimonial Causes and Matters, and the Judges of the Landed Estates Court, except such, if any, of the aforesaid Judges as shall be appointed an ordinary Judge of the Court of Appeal.

The Lord Chancellor shall be appointed and shall hold his office in the same manner as heretofore.

Whenever the office of a Judge of the said High Court, other than the Lord Chancellor, shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent.

All persons to be hereafter appointed to fill the places of the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge, other than the Lord Chancellor and the Judges last-mentioned, who shall be appointed to fill the place of any Judge of the High Court of Justice, shall be styled in his appointment "Judge of Her Majesty's High Court of Justice in Ireland."

Any vacancy which may exist at the time of the commencement of this Act, or the first vacancy which shall occur next after the commencement of this Act, in any one of the offices of the Puisne

Justices of the Common Pleas or of the Junior Barons of the Exchequer respectively, shall not be filled by the appointment of any new Judge, save by virtue of the provisions in that behalf herein-after contained.

Provided always, that when first after the commencement of this Act one of the existing Judges of the Landed Estates Court shall die, resign, or otherwise vacate his office, the vacancy thus occasioned shall not be filled up until a Commission shall have been issued by Her Majesty under her Royal Sign Manual to ascertain and report whether the business in connexion with the Division of the High Court of Justice (herein-after termed the Chancery Division) makes it requisite that such appointment should be made, nor until the expiration of a period of forty days after the date of such report, if Parliament be then sitting, and if Parliament be not then sitting, until the expiration of a period of forty days after the commencement of the then next Session of Parliament.

All the Judges of the Supreme Court shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law in Ireland, and shall have in all respects, save as in this Act otherwise expressly provided, equal power, authority, and jurisdiction.

The Lord Chancellor for the time being, or in his absence the Lord Chief Justice for the time being, shall be President of the High Court of Justice.

As to Judges of Landed Estates Court.

7. The jurisdiction exercised by the Judges of the Landed Estates Court shall continue to be exercised by them, and by the Judges who may from time to time be appointed to succeed them, and, in the case of illness, absence, or other inability of them or either of them to discharge their duties, or of a vacancy in the office of the said Judges or either of them, by any other Judge of the Chancery Division of the High Court.

If the state of business, in connexion with their peculiar jurisdiction shall permit, the said Judges shall in addition be bound from time to time to assist in the general business of the Chancery Division.

The existing Judges of the Landed Estates Court and their successors shall be Judges of the said Chancery Division, and shall be distinguished as the Land Judges of the said Division. The rules and orders and practice of the Landed Estates Court shall continue to be used in proceedings for the sale or partition of estates, declaration or record of titles, and all other proceedings which would

A.D. 1877.

have been within the exclusive cognizance of the Landed Estates Court if this Act had not passed, before the Land Judges, unless and until altered by the Lord Chancellor and the said Judges. The Lord Chancellor and the Land Judges, or either of them, may from time to time alter the rules and orders and practice in all proceedings before the Land Judges, and make new rules and orders for the regulation of such practice and proceedings, and for the distribution of business between the Judges.

There shall be a separate seal for the Land Judges, and conveyances executed with this seal shall have the same force as those executed with the seal of the Landed Estates Court.

As to Judges of Court of Bankruptcy.

8. The existing Judges of the Court of Bankruptcy and their successors in such offices respectively shall be appointed in the same manner as heretofore, and shall, as to tenure of office, rank, title, patronage, rights, privileges, and powers of appointment and dismissal, salary, pension, jurisdiction, powers, and authority respectively, remain and be in the same condition and be liable to discharge the same duties respectively, and none other, as if this Act had not been passed.

The practice and procedure of the Court of Bankruptcy, and the powers to make rules and orders regulating the same, shall continue and be exercised in the same manner as if this Act had not been passed. The tenure, salaries, pensions, rights, privileges, and duties of the officers of the said Court shall also continue the same as if this Act had not been passed.

Appeals from orders of the Judges of the said Court shall lie to the Court of Appeal constituted by this Act, in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

Existing Judge of Admiralty.

9. The existing Judge of the High Court of Admiralty shall retain the same jurisdiction, authority, rights of patronage, and of dismissal, rank, and salary as if this Act had not been passed.

Appeals from his orders and decrees shall lie to the Court of Appeal constituted by this Act in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

When the existing Judge of the High Court of Admiralty shall die, resign, or otherwise vacate his office, no person shall be

appointed to succeed him in his said office, and thereupon the High Court of Admiralty in Ireland shall be united and consolidated with the Supreme Court of Judicature in Ireland, and all the jurisdiction vested in and capable of being exercised by the Judge of the said Court of Admiralty, and all causes and proceedings then pending in the said Court, shall be transferred to the High Court of Justice. The jurisdiction theretofore vested in and capable of being exercised by the Judge of the said Court of Admiralty shall thenceforth, and until the vacancy next ensuing after the passing of this Act in the office of the judge of the Probate and Matrimonial Division herein-after constituted shall be filled up by the appointment of a new judge, be vested in and may be exercised by such judge of the High Court appointed to be a judge since the first day of January one thousand eight hundred and seventy-four, or such judge of the High Court appointed before that day, and who shall consent thereto, as the Lord Lieutenant shall by order under his hand nominate in that behalf.

The power of nomination conferred by this section upon the Lord Lieutenant may be exercised by him in the manner aforesaid at any time after the passing of this Act, and thereafter from time to time whenever any judge so nominated by him shall die, or resign, or become incapable of executing the duties so imposed upon him.

In case any judge appointed before the said first day of January one thousand eight hundred and seventy-four shall be so nominated, he shall be paid for the performance of the duty so imposed upon him such additional salary as the Lord Lieutenant, with the consent of the Treasury, shall appoint.

Upon the filling up of the vacancy next ensuing after the passing of this Act in the office of the judge of the Probate and Matrimonial Division herein-after constituted by the appointment of a new judge, all the jurisdiction then vested in any judge nominated in that behalf by the Lord Lieutenant in pursuance of the preceding provisions of this section, shall be transferred to and vested in and may be exercised by such new judge, and the power of nomination conferred by this section upon the Lord Lieutenant shall thereupon cease; and all causes and proceedings in Admiralty, whether so transferred or afterwards commenced, shall proceed and be heard before the judge in whom such Admiralty jurisdiction shall for the time being be vested under the preceding provisions of this section. Until such transfer of jurisdiction to the High Court of Justice as aforesaid the Lord

A.D. 1877.

Chancellor, with the concurrence of the Treasury, shall, on vacancy in the offices of the Admiralty Court, make provision for the temporary discharge of the duties of such offices.

Constitution of Court of Appeal.

10. Her Majesty's Court of Appeal in Ireland shall be constituted as follows: There shall be four ex officio Judges thereof, and two ordinary Judges, who shall from time to time be appointed by Her Majesty. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lord Justice of Appeal in Chancery, and such other person as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either before or after the commencement of this Act, and if made before shall take effect from the commencement of this Act, and may be made upon the terms as to salary and otherwise, and subject to the conditions and in the manner provided by the "Chancery Appeal Court (Ireland) Act, 1856," in respect of the office thereby created.

Besides the said ex officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit) to appoint under Her Royal Sign Manual as additional Judges of the Court of Appeal any persons who, having held the office of Lord Chancellor or of Chief Justice, Chief Justice of the Common Pleas, or Chief Baron of the Exchequer in Ireland, shall signify in writing their willingness to serve as such additional Judges.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent, as provided by the "Chancery Appeal Court (Ireland) Act, 1856."

The Lord Chancellor for the time being shall be President of the Court of Appeal. Except in matters which are by this Act, or by some other Act, specially reserved to the Lord Chancellor, he shall not be bound or required to exercise any of the functions of a Judge of the High Court, or of the Chancery Division of the same, unless he shall, by special order, direct that any matter shall be disposed of by himself, but all such matters shall be disposed of by one of the other Judges of the Chancery Division, and the Lord Chancellor

shall in relation to such matters exercise only the functions of a Judge of the Court of Appeal. A.D. 1877.

Vacancies by resignation of Judges and effect of vacancies generally.

11. The office of any Judge of the Court of Appeal or of any Judge of the High Court of Justice may be vacated by resignation in writing, under his hand, addressed to the Lord Lieutenant, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed to the office of ordinary Judge of the Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge.

Qualifications of Judges.

12. Any person who has practised for not less than ten years at the Bar of Ireland shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed Lord Justice of the Court of Appeal in Chancery in Ireland, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed to the office of ordinary Judge of the said Court of Appeal.

Tenure of office of Judges, and oaths of office.

13. Every Judge of the High Court of Justice other than the Lord Chancellor, and every ordinary Judge of the Court of Appeal, shall hold his office for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Precedence of Judges.

14. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court of Judicature in Ireland in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal shall rank as provided by the "Chancery Appeal Court (Ireland) Act, 1856," and if otherwise of equal rank, between themselves according to the priority of their respective appointments.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the ordinary Judges of the Court of Appeal, and among themselves (subject to the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

A.D. 1877.

Saving of rights and obligations of existing Judges.

15. Every existing Judge who is by this Act made a Judge of the High Court of Justice or ordinary Judge of the Court of Appeal shall, as to tenure of office, rank between himself and the other existing Judges, title, patronage, and powers of appointment and dismissal, and all other privileges and disqualifications, and also as to salary and pension, save as is herein provided, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, every such existing Judge shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed.

No Judge, whether of the High Court of Justice or of the Court of Appeal, who was appointed before the first of January one thousand eight hundred and seventy-five, except a Land Judge, shall be required, without his own consent, to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or for the trial of crimes and offences, unless he was so liable by usage or custom at the time of the passing of this Act; but every Judge, whether of the High Court of Justice or of the Court of Appeal, appointed after the said date shall from and after the passing of this Act be capable and bound to act in such Commission, if named therein.

Service as a Judge in the High Court of Justice, or as an ordinary Judge in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

The provisions of this section shall not apply to the Lord Chancellor.

Provisions for extraordinary duties of Judges of the former Courts.

16. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of Justice in any Court whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, every Judge of the said High Court, except where otherwise expressly directed by this Act, shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such

case as aforesaid upon the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Salaries of certain existing Judges.

17. From and after the time fixed for the commencement of this Act, there shall be paid to the existing Judges herein-after mentioned the following salaries; that is to say,

To the Master of the Rolls four thousand pounds a year.

To each of the Puisne Justices and Junior Barons three thousand eight hundred pounds a year.

To each of the Land Judges three thousand five hundred pounds a year.

Such salaries shall be instead of the salaries by law payable to such Judges immediately before such commencement, and such salaries shall be paid to such Judges respectively on the same days and in the same manner in every respect as their former salaries; the pension which may be granted to the existing Master of the Rolls shall be such as would be payable to him if this Act had not passed, and the pensions which may be granted to all other existing Judges shall be two thirds of the salaries which, after the commencement of this Act, shall be payable to them respectively.

Salaries of future Judges.

18. There shall be paid to Judges appointed after the commencement of this Act the following salaries, which shall in each case include any pension to which the Judge may be entitled in respect of any public office previously filled by him:

To the Lord Chief Justice five thousand pounds a year, and to the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, each, four thousand six hundred pounds a year.

To each ordinary Judge of the Court of Appeal such salary as in pursuance of the "Chancery Appeal Court (Ireland) Act, 1856," might have been assigned for him if he had been appointed under the said Act.

To each of the other Judges of the High Court of Justice, the sum of three thousand five hundred pounds a year.

The Chiefs of the Divisions termed in this Act the Queen's Bench, Common Pleas, and Exchequer Divisions, whether appointed before or after the commencement of this Act, and the other Judges of the same Divisions who were appointed before the commencement of this Act, shall not be entitled to any allowance in addition to their salaries in respect of circuit. Every other Judge of the High

A.D. 1877.

Court of Justice, or of the Court of Appeal, whether appointed before or after the commencement of this Act, who shall actually go circuit as a Judge shall be entitled to receive in respect of such circuit one hundred and fifty pounds. This last provision shall apply, immediately on the passing of this Act, to any Judge who, not being a Judge of a Common Law Court, shall be named in the commission and shall actually go circuit.

Any Judge, whether appointed before or after the passing of this Act, who shall be sent as Judge for a winter assizes or special commission shall be entitled to receive in respect thereof such additional payment, not exceeding the amount allowed for a circuit, as the Lord Lieutenant shall determine; but no Judge shall receive any additional or extra payment in respect of an adjourned assizes: Provided always, that nothing herein contained shall affect such rights to remuneration in respect of any special commission or adjourned assizes as the existing Lord Chief Justice, Chief Justice of the Common Pleas, and Lord Chief Baron possessed before the passing of this Act.

No salary shall be payable to any additional Judge of the Court of Appeal, but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

19. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice other than the Lord Chancellor and also to any ordinary Judge of the Court of Appeal appointed after the commencement of this Act who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life, of the amount following; (that is to say,)

In the case of the ordinary Judges of the Court of Appeal, the same amount of pension which might have been granted to the Lord Justice of the Court of Appeal in Chancery in Ireland if this Act had not passed:

In the case of the Judges of the High Court of Justice, two thirds of their respective salaries.

Salaries and pensions how to be paid.

20. The salaries, allowances, and pensions payable to the Judges of the High Court of Justice and the ordinary Judges of the Court of Appeal respectively under this Act shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof. Such salaries and pensions shall grow due from day to day, but shall be payable to

the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine. A.D. 1877.

PART II.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

21. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him or the Lord Chancellor in relation to the Court of Chancery as a Common Law Court, and including any jurisdiction of the Masters in Chancery:

(2.) The Court of Queen's Bench:

(3.) The Court of Common Pleas:

(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court:

(5.) The Court of Probate:

(6.) The Court for Matrimonial Causes and Matters:

(7.) The Landed Estates Court, including the control and direction of the Record of Title Office of the said Court, and all powers and authorities exercised by the Judges of the said Court, or any of them, under the Record of Title Act, 1865:

(8.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, or by any Master of the Court of Chancery, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any

A.D. 1877.

such Judges or Judge, Masters or Master, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Provided always, that nothing herein contained shall abridge or alter the jurisdiction conferred by any Act or Acts upon any Judge or Judges, Commissioner or Commissioners, of Assize.

Jurisdiction not transferred to High Court.

22. There shall not be transferred to or vested in the High Court of Justice, by virtue of this Act,

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, or the High Court of Admiralty:

(2.) Any jurisdiction usually vested in the Lord Chancellor in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

(3.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of Ireland:

(4.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:

(5.) Any jurisdiction of the Master of the Rolls in relation to records in Dublin or elsewhere in Ireland.

Jurisdiction transferred to Court of Appeal.

23. The Court of Appeal shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,)

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the High Court of Admiralty, or the Court of Bankruptcy:

(2.) All jurisdiction and powers of the Court of Exchequer Chamber, including its appellate jurisdiction in appeals under the Registration of Voters Acts:

(3.) All jurisdiction and powers of the Court for Land Cases Reserved at Dublin under the provisions of the "Landlord and Tenant, Ireland, Act, 1870:"

(4.) Jurisdiction on writs of error in criminal cases on appeal from the Queen's Bench Division of the High Court of Justice. A.D. 1877.

Appeals from High Court.

24. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as herein-after mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Transfer of pending business.

25. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the High Court of Justice and the Court of Appeal respectively shall cease to be exercised, except by the High Court of Justice and the Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or the Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the High Court of Justice and the Court of Appeal respectively, in the

A.D. 1877.

same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued as follows; (that is to say,) in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, or in the Court for Land Cases Reserved at Dublin, in and before the Court of Appeal; and, as to all other proceedings, in and before the High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be), down to the point at which the transfer takes place; and so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued in and before the said Courts respectively, either in the same or the like manner as they would have been continued in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the High Court of Justice and the Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

Rules as to exercise of jurisdiction.

26. The jurisdiction by this Act transferred to the High Court of Justice and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Law and equity to be concurrently administered.

27. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or

to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit, instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed

A.D. 1877.

a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect

to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Rules of law upon certain points.

28. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next hereinafter mentioned: Be it enacted as follows:

Administration of assets of insolvent estates.

(1.) In the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt in Ireland; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

A.D. 1877.

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. This provision, however, is not to affect the enactments contained in the tenth section of the Real Property Limitation Act, 1874, when the same shall come into effect.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sign and cause to be served notices to quit, determine tenancies, or accept surrenders thereof and sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person; and such action, suit, or proceeding shall not be defeated by proof that the legal estate in the lands the possession of which is sought to be recovered, or in respect of which the rents or profits are sought to be recovered, or in respect to which the trespass or other wrong has been committed, is vested in such mortgagee: Provided always, that a mortgagor shall not be at liberty to exercise any of the powers hereby conferred if an express declaration that they shall not be exercised is contained in the mortgage.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor

would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Stipulations not of the essence of contracts.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have theretofore received in equity.

Injunctions and receivers.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made: and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by collisions at sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be

A.D. 1877.

found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

(10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

Cases of conflict not enumerated.

(11.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III.

Sittings and Distribution of Business.

Abolition of terms.

29. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice, the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

Vacation.

30. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may, before the commencement of this Act, upon any report or recommendation of the Judges by whose advice the Lord Lieutenant is herein-after authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court herein-after mentioned, with the consent of the Lord Chancellor, from time to time make, revoke, or modify orders regulating the vacations to be observed by the High Court

of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed.

Sittings in vacation.

31. Provision shall be made by Rules of Court for the hearing, in Dublin, during vacation, by Judges of the High Court of Justice and the Judges of the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of Judges of High Court on Circuit.

32. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other person or persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Dublin as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Sittings for trial by jury in Dublin.

33. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Dublin, and such sittings shall, so far as is reasonably practicable, and subject to

A.D. 1877.

vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Dublin, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the High Court of Justice. Subject to Rules of Court, the plaintiff shall, in the document by which each cause shall be commenced, name the county or place in which he proposes that the cause shall be tried or proceeding shall take place, but the Court or a Judge may, in their or his discretion, direct the same to be tried in any other county or place; and, so far as shall be reasonably consistent with the convenient and speedy discharge of the business, every issue and question of fact to be submitted to a jury shall be tried in the county or place where the cause of action shall have arisen. Any order of a Judge as to the place of trial of any such issue or question may be discharged or varied by a Divisional Court.

Whenever application shall be made for leave to serve any document by which a cause may be commenced upon a defendant resident out of the jurisdiction of the Supreme Court, whether by serving such defendant personally or by substituting service upon another person for him, the Court or Judge to whom such application shall be made shall have regard to the amount or value of the claim or property affected, and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence; and no such leave shall be granted without an affidavit stating the particulars necessary for enabling the Court or Judge to exercise a due discretion in the manner aforesaid.

Divisions of the High Court of Justice.

34. For the more convenient despatch of business in the High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such Judges respectively as herein-after mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

(1.) One Division shall consist of The Lord Chancellor, who shall be President thereof, The Master of the Rolls, The Vice-Chancellor and the Judges of the Landed Estates Court;

(2.) One other Division shall consist of The Lord Chief Justice, who shall be President thereof, and the other Judges of the Court of Queen's Bench;

(3.) One other Division shall consist of The Lord Chief Justice of the Common Pleas, who shall be President thereof, and the other Judges of the Court of Common Pleas;

(4.) One other Division shall consist of The Lord Chief Baron of the Exchequer, who shall be President thereof, and the other Barons of the Court of Exchequer;

(5.) One other Division shall consist of the Judge of the Courts of Probate and for Matrimonial Causes and Matters;

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate and Matrimonial Division.

The Queen's Bench Division shall have not less than four Judges; the Common Pleas and Exchequer Divisions not less than three each; and the Probate and Matrimonial Division shall have one Judge.

Any vacancy at the time of the commencement of this Act in the office of Judge of any Court the jurisdiction of which is by this Act transferred to the High Court of Justice or the Court of Appeal, if such office be continued by this Act, may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Save as by this Act expressly provided, any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions, provided, that in the case of an existing Judge, such transfer shall not be without his own consent.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the Division to which the Judge whose place has become vacant belonged, and shall succeed to the duties of such Judge.

Rules of Court to provide for distribution of business.

35. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. In distributing the general business between the Queen's Bench, Common Pleas, and Exchequer Divisions, regard shall be had to

A.D. 1877.

any special jurisdiction vested in them respectively, so as to apportion the business fairly between them.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

36. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively:

(3.) All matters pending in the Landed Estates Court at the commencement of this Act:

(4.) All matters which would have been within the exclusive cognizance of the Landed Estates Court, or of any Judge or Judges thereof, if this Act had not passed:

(5.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership or other accounts;

The redemption or foreclosure of mortgages;

The raising of portions, or other charges on land;

The sale and distribution of the proceeds of property subject to any lien or charge;

The execution of trusts, charitable or private;

The rectification, or setting aside, or cancellation of deeds or other written instruments;

The specific performance of contracts between vendors and purchasers of land, including contracts for leases, and also the specific performance of any other contracts in respect of which a Court of Equity decrees performance;

The partition or sale of real estates, including chattels real;

The wardship of infants and the care of infants estates.

All causes and matters included under the heads above numbered (3) and (4) shall be assigned to the Land Judges of the Chancery Division.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

A.D. 1877.

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas if this Act had not passed.

Provided always, that if and whenever the said Division shall be engaged in the hearing or despatch of any business relating to a parliamentary election which would have been within the exclusive cognizance of the Court of Common Pleas, but only so long as there shall be but three Judges of the Common Pleas Division, the junior Puisne Judge for the time being of the Queen's Bench Division shall be empowered and bound to attend and take part in the hearing and despatch by the Common Pleas Division of such business, and shall, for all the purposes of such business, be a fourth member of the Common Pleas Division.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Probate and Matrimonial Division of the said Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Matrimonial Causes and Matters, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or of the Court for Matrimonial Causes and Matters, if this Act had not passed.

Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.

37. Subject to any Rules of Court, and to the provisions hereinbefore contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court as he may think fit,

A.D. 1877.

by marking the document by which the same is commenced with the name of such Division, and giving notice thereof to the proper officer of the Court: Provided, that

(1.) All interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; and

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions herein-before contained, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned; and

(3.) Every testamentary or matrimonial proceeding shall be commenced in the Probate and Matrimonial Division, and addressed to the Judge of that Division for the time being:

(4.) Every proceeding in any other matter within the exclusive jurisdiction of the Landed Estates Court before the passing or under the provisions of this Act shall be commenced in the Chancery Division and addressed to the Land Judges of that Division.

Power of transfer.

38. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the

High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Directions as to procedure in Landed Estates Court.

39. Every application to appoint a receiver over land, when such land is the subject of a proceeding before the Land Judges, shall be made to the Land Judge to whom such proceeding is attached. In any proceeding before a Land Judge, the Judge shall decide all controversies and questions as to the validity or effect of any deed, instrument, or contract affecting land or any charge or incumbrance thereon, or as to the construction or effect of any devise or bequest of any estate or interest in or of any charge or incumbrance upon, land, which it may be necessary to decide for the purpose of such proceeding, including the validity or effect of any lease or instrument of tenancy affecting land requisite to be ascertained for the due settlement of a rental; and shall take accounts of and administer the assets of any deceased person whenever it may be necessary for a distribution of the purchase money of any land sold before him, provided there shall not be then depending before any of the Judges of the High Court a suit for the administration of such assets; and it shall not be necessary to institute any other cause or matter for any of such purposes. The procedure in such cases shall be settled by Rules of Court, to be made by the Lord Chancellor, with the Land Judges, or either of them, and any person whether already a party to the proceeding or not, who shall have been duly served with notice in writing pursuant to any Rule of Court or order of the Court shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his claim or defence as if he had duly sued or been sued in a suit instituted for the purpose of deciding any such question or controversy.

Sittings in Dublin and on Circuits.

40. Subject to any arrangements which may be from time to time made by agreement between the Judges of the said High Court, the sittings for trials by jury in Dublin, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such Commission any Ordinary Judge of the Court of Appeal, or any Judge of the Chancery Division appointed after the first of January one thousand eight hundred and seventy-five, or any Judge of the Court of Bankruptcy, or any of Her Majesty's Serjeants-at-Law, or

A.D. 1877.

Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court: Provided that no existing Judge of the Court of Bankruptcy shall be included in such Commission without his own consent: And any person not a Judge of the High Court who shall be sent as a Commissary shall be paid the same amount and in the same manner as such person would have been paid if before the passing of this Act he had been sent as a Commissary, and if he shall be sent in place of a Judge, who, under the provisions of this Act, was bound to go circuit without payment in respect thereof in addition to his salary, then one hundred and fifty pounds shall be deducted from the salary of such Judge: Provided also, that, any law or custom to the contrary, it shall not be necessary in any commission for the trial of crimes and offences in the county of the city and county of Dublin to nominate more than one Judge to preside, nor for more than one Judge to preside under any commission existing at the commencement of this Act.

Rota of Judges for election petitions.

41. The Judges to be placed on the rota for the trial of election petitions for Ireland in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be the Judges upon the rota for the trial of such petitions during the then current year shall continue upon such rota for the same period, and in the same manner as if this Act had not passed.

Powers of one or more Judges not constituting a Divisional Court.

42. Any Judge of the High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

A.D. 1877.

Divisional Courts of the High Court of Justice.

43. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or more of the Judges thereof. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

44. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all such business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, as, according to the practice now existing in the Superior Courts of Common Law in Ireland, would have been proper to be transacted or disposed of by the Court sitting in Banco, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court of Justice, and in case of difference among them, in such manner as the majority of the said Judges with the concurrence of either the Lord Chancellor or the Lord Chief Justice shall determine.

A.D. 1877.

Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.

45. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery Division of the said High Court, or out of any testamentary or matrimonial cause or proceeding assigned to the Probate and Matrimonial Division, shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate, and the Court for Matrimonial Causes and Matters respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which, after the commencement of this Act may be commenced in the Chancery Division of the said High Court, shall be assigned to one of the Judges thereof, in the same manner as heretofore: Provided that (subject to any Rules of Court, and to the power of transfer) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the Court of Probate or the Court for Matrimonial Causes and Matters, shall be assigned to the Judge of the Probate and Matrimonial Division for the time being, and all matters within the exclusive jurisdiction of the Landed Estates Court shall be assigned to the Land Judges.

Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.

46. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or of the Court of Appeal, or may direct any case, or point in a case, to be argued before any such Court: and any such Court shall have power to hear and determine any such case or point so reserved or so directed to be argued:

Provided that nothing in this Act, or in any rule made under its provisions, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law and as to the evidence applicable to such issues: Provided also, that such right may be enforced by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

A.D. 1877.

Land cases reserved.

47. From and after the commencement of this Act, any person aggrieved by any decision or order upon any question of law, made by any judge or judges of assize under the Landlord and Tenant (Ireland) Act, 1870, or, in the case of the county or the county of the city of Dublin, made by the judges mentioned in that Act in that behalf, may require the judge or judges making such decision or order to reserve such question of law by way of case stated for the consideration of the Court of Appeal; and the same shall thereupon be reserved accordingly in such manner and form as shall be prescribed by rules made in pursuance of the thirty-first section of the said Act.

Provision for Crown cases reserved.

48. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the "further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such Chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Motions for new trials to be heard by Divisional Courts.

49. In proceedings in the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the

A.D. 1877.

Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

What orders shall not be subject to appeal.

50. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, being costs which by law are left to the discretion of the Court, shall be subject to any appeal, unless by leave of the Court or Judge making such order.

Costs.

51. Subject to the provisions of this Act and of Rules of Court, the costs of and incident to every proceeding in the High Court of Justice and Court of Appeal respectively shall be in the discretion of the Court, but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted on in Courts of Equity: Provided, that the costs of every action, question, and issue tried by a jury shall follow the event, unless, upon application made, the Judge at the trial or the Court shall for good cause shown otherwise order, and any order of a Judge as to such costs may be discharged or varied by a Divisional Court.

Where in any proceeding in the High Court of Justice or Court of Appeal the costs of any party to the proceeding are ordered to be paid or borne by another party to the proceeding, or by a fund or estate, those costs shall, if the Court so directs, include, in addition to the costs now allowed on taxation as between party and party, all other costs, charges, and expenses reasonably incurred for the purposes of the proceeding; but this enactment shall not apply to any proceeding for the recovery of a penalty.

As to discharging orders made in Chambers.

52. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as to costs, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

Provision for absence or vacancy in the office of a Judge.

53. In case in the Chancery Division of the High Court of Justice from the amount of business, or in any Division of the said Court from the absence of a Judge or Judges through illness, it shall be found expedient that some or one of the Ordinary Judges of

the Court of Appeal appointed after the passing of this Act should assist in transacting the business of such Division, it shall be lawful for them and him so to do; and while so sitting and acting such Judge or Judges shall have all the power, jurisdiction, and authority of a Judge or Judges of the said High Court of Justice.

Power of a single Judge in Court of Appeal.

54. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than *two* Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Any direction incidental to a proceeding in appeal, not involving the hearing of such decrees, judgments, or orders, final or interlocutory, as aforesaid, may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

Constitution of Court of Appeal when hearing Appeals.

55. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made in a cause or matter heard by himself either sitting alone or with other Judges.

Arrangements for business of Court of Appeal.

56. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal shall be made by and under the direction of the President and the other Judges of the said Court of Appeal.

PART IV.

Trial and Procedure.

References and assessors.

57. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, the High Court or the Court of Appeal may, in any civil cause or matter as aforesaid in which it may think expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such assessors shall be determined by the Court.

A.D. 1877.

Power to direct trials before Referees.

58. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before a special Referee to be agreed on between the parties, or in default of agreement to be appointed by the Court or Judge. All such trials before Referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

Power of Referees and effect of their findings.

59. In all cases of any reference to or trial by Referees under this Act the Referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such Rules) by the Court or Judge ordering such reference or trial; and the report of any Referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Powers of Court with respect to proceedings before Referees.

60. With respect to all such proceedings before Referees and their Reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court, with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Amendment Act (Ireland), 1856.

33 & 34 Vict. c. 109. ss. 5 and 6 to extend to actions in High Court.

61. The provisions contained in the fifth and sixth sections of the Common Law Procedure Amendment Act, Ireland, 1870, shall apply to all actions, including ejectments, commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a Civil Bill Court.

Provision as to making of Rules of Court before or after the commencement of the Act.

62. The Lord Lieutenant may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, the Lord Justice of Appeal, the Chief Justice, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron, or any three of them, and of the other Judges of the several Courts intended to be united and consolidated by this Act, or of a majority of such other Judges, make rules, to be styled Rules of Court, for carrying this Act into effect, and in particular for all or any of the following matters; that is to say,

A.D. 1877.

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal, including all matters connected with writs, forms of actions, parties to actions, evidence, and mode and place of trial; and

(3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein (including the costs to be allowed to solicitors of the Supreme Court in respect of business transacted in or before any of such Courts or the offices thereof, or the fees, remuneration, and expenses to be allowed to witnesses, or the fees to be payable to or receivable by sheriffs for the discharge of any duties under this Act or in obedience to the order of the Supreme Court, or any division or master thereof,) or relating to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively, for which provision is not expressly made by this Act; and

(4.) For regulating the sittings of judges in chambers, the issuing and hearing of summonses, and the allowance or disallowance of the expense of the attendance of counsel upon such hearings, and generally for the efficient despatch of chamber business under the provisions of this Act; and

(5.) For prescribing, regulating, or doing anything which under this Act may be prescribed, regulated, or done by Rules of Court.

From and after the commencement of this Act, the Lord Lieutenant may at any time, with the concurrence of a majority of the Judges of the Supreme Court present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), by Order in Council alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in the Lord Lieutenant on the recommendation of the Judges herein-before specified before the commencement of this Act.

In making Rules of Court in pursuance of this Act, regard shall be had to the Rules of Court for the time being in force under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875,

A.D. 1877.

so as that the pleading, practice, and procedure in the High Court of Justice and Court of Appeal respectively constituted by this Act shall, so far as may be practicable and convenient, be the same as the pleading, practice, and procedure in the High Court of Justice and Court of Appeal respectively constituted by the said Acts.

All Rules of Court made in pursuance of this part of this Act shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this part of this Act, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after the time when they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this Act.

The powers to make Rules of Court contained in this section are not to affect special provisions in this Act enabling rules to be made in particular instances.

The Rules contained in the schedule to this Act (which shall be read and taken as part of this Act) shall come into operation immediately on the commencement of this Act; and as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority herein provided in that behalf, any of them may be altered or varied; but such Rules and also all Rules to be made before the commencement of this Act as herein mentioned shall, for all the purposes of this Act, be Rules of Court capable of being annulled or altered by the same authority by which any other Rules of Court may be made, altered, or annulled after the commencement of this Act.

Circuits and assizes.

63. The Lord Lieutenant, may from time to time, after the commencement of this Act, by Order in Council, rearrange the circuits or reduce their number, and direct what counties and towns shall be upon each circuit.

Winter assizes.

64. "The Winter Assizes Act, 1876," (excepting section 5,) shall from and after the passing of this Act extend to Ireland, and all the powers thereby vested as to England in Her Majesty shall as to Ireland be vested in and may be exercised by the Lord Lieutenant, by and with the advice and consent of the Privy Council in Ireland, and every order of the Lord Lieutenant in Council made in pursuance of the said Act, and published in the Dublin Gazette, shall have the like effect in Ireland as an order in Council made in pursuance of the said Act would have in England, and provision may

be made by such order for the hearing and despatch at any winter assizes, as well of criminal business as also of such civil business as may be by such order prescribed.

Rules of Courts of Probate, and for Matrimonial Causes, to be Rules of the High Court.

65. All Rules and Orders of Court which shall be in force in the Court of Probate, and the Court for Matrimonial Causes and Matters respectively, at the time of the commencement of this Act, except so far as they shall by Rules of Court be expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been Rules of Court under this Act.

Criminal procedure, subject to future Rules, to remain unaltered.

66. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

In cases on the Crown side of the Queen's Bench Division a writ of error to the House of Lords may issue in like manner and subject to like conditions and permission and in respect of like proceedings as such writ would have issued from the Court of Queen's Bench, if this Act had not been passed.

Act not to affect rules of evidence.

67. Nothing in this Act, or in any Rules of Court to be made by virtue hereof, save so far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

68. Save as by this Act, or by any Rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or any Rules of Court, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

Additional power as to regulation

69. Where any provisions in respect of the practice or procedure of any courts, the jurisdiction of which is transferred by this Act

A.D. 1877.

of practice and procedure by Rules of Court.

to the High Court of Justice or the Court of Appeal are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

70. Every General Rule, Order in Council, Rule of Court, and General Order required by this Act to be laid before each House of Parliament, shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Councils of Judges to consider procedure and administration of justice.

71. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the Court of Appeal: And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

A.D. 1877.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

72. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the High Court of Justice and the Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the High Court of Justice: Provided always, that any provisions of such Acts inconsistent with the provisions of this Act shall be and the same are hereby repealed.

PART V.

Officers and Offices.

Transfer of existing staff of officers to Court of Judicature.

73. The Receiver Master and the Accountant-General in Chancery, and the Masters in the Courts of Common Law, the Clerk of the Crown and Hanaper, the Clerk of the Crown of the Court of Queen's Bench, and the Taxing Masters, Secretaries, Registrars, Clerk of Records and Writs, Examiner in the Court of Chancery, Registrar of the consolidated Nisi Prius Court, Clerks of the Rules and Pleadings and Record Assistants, Chief and other Clerks, Commissioners to take oaths or affidavits, or the acknowledgment of deeds by married women, Stamp Distributors, Messengers, Court and Office Keepers, Hall Porters, Tipstaves, Criers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of or connected with any Court, the jurisdiction of which is hereby transferred to

A.D. 1877.

the said Courts respectively, also all persons who were officers of or connected with the late Masters of the Court of Chancery, or their offices, shall, from and after the commencement of this Act, be attached to the Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed; any such officer who is removable by the Court to which he is now attached shall be removable by the Court or Division to which he shall be attached under this Act, or by the majority of the Judges thereof, for the same causes as heretofore.

Provided, however, that the existing Third Assistant in the Writ and Seal Office and the existing Clerk of Errors shall not be entitled to the benefit of this provision, and shall cease to be officers of the High Court upon an order of the Lord Chancellor to that effect without being entitled to compensation.

The existing Registrars, Assistant Registrars, and Clerks to the Registrars in the Chancery Registrars office, and also the existing officers of the three law courts, shall, so long as they continue officers of the Courts, retain any right of succession secured to them by Act of Parliament, so as to entitle those who are thus secured in their respective offices, or in any substituted offices, to the succession to appointments with similar or analogous duties and with equivalent salaries.

All officers who at the time of the commencement of this Act shall be attached to the Court of Chancery, or any Judge or Master thereof, shall be attached to the Chancery Division of the High Court of Justice; all officers who at the time of the commencement of this Act shall be attached to the Landed Estates Court, or the Judges thereof, shall be attached to the Land Judges of the Chancery Division; all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Probate and the Court for Matrimonial Causes and Matters shall

be attached to the Probate and Matrimonial Division of the said High Court.

All clerks and other officers attached to any existing Judges who under the provisions of this Act shall become a Judge of the High Court of Justice or of the Court of Appeal shall continue attached to such Judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto, and shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed.

The distribution of business among the officers so attached to the said respective Divisions, the duties to be discharged by them, and any re-arrangement connected therewith shall be regulated, controlled, and directed, in the case of the Chancery Division as to the Landed Estates Court officers by the Lord Chancellor with the concurrence of the Land Judges, or one of them, and as to all other officers of the said Chancery Division by the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor, or any two of them, of whom the Lord Chancellor shall be one; in the case of the officers of the Courts of Probate and for Matrimonial Causes and Matters by the Lord Chancellor and the Judge of the Probate and Matrimonial Division; and in the case of the officers of the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, by the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

If the services of any existing officer attached in manner aforesaid to a Division shall not be required in the Division to which he is attached, it shall be lawful for the Lord Chancellor, with the concurrence of the other Presidents of Divisions, or one of them, by order, to transfer such officer to some other office of the High Court of Justice, or some Division thereof, subject however to the conditions herein-after imposed as to the nature of the duties he is to perform.

The following offices shall at dates to be fixed by the Lord Chancellor, with the concurrence of the Treasury, but within two years from the commencement of this Act, be consolidated in manner following: the Taxing Offices of the Common Law Courts and of the Landed Estates Court with the Taxing Office of the Court of Chancery, so as to have but one Taxing Office for the Supreme Court, and the several Courts and Divisions thereof; the Office of Accountant in the Landed Estates Court with the Office of

A.D. 1877.

Accountant-General in the Court of Chancery, so as to have but one accounting department for the Supreme Court and all courts and divisions thereof; the Writ and Seal Office of the Law Courts with the Record and Writ Office in Chancery, so as to have but one office out of which all writs and summonses to commence proceedings in the High Court or any Division thereof may issue, and in which the records of all proceedings therein may be preserved; and the Notice Office of the Landed Estates Court with the Notice Office of the Court of Chancery.

Subject to the provisions in this Act as to tenure and salary of existing officers, and as to the discharge by them of analogous duties only, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may, by order, consolidate any other offices of the courts whose jurisdiction is hereby transferred to the Supreme Court in any cases where the union of the existing courts into one Supreme Court shall render it no longer necessary or expedient to retain such offices separate.

The distribution of business in the offices so united and consolidated, and the duties to be discharged by the officers thereof, shall be regulated and directed by the orders and under the control of the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one.

All other officers and persons (if any) hereby attached to the Supreme Court, for the regulation of whose duties provision has not been herein-before made, shall have their duties defined by the Lord Chancellor.

An existing officer hereby attached to the Supreme Court or any Court or Division thereof shall not be required to discharge any duties which are not either the same as or similar or analogous to those which he performed immediately before the commencement of this Act; and in case of question as to the duties proposed to be imposed upon an officer being similar or analogous, the Lord Chancellor shall decide, having regard to the rank and position previously held by such officer.

The Lord Chancellor may, with the consent of the Treasury, increase the salary of any officer who is by this Act attached to the Supreme Court, or any Court, Division, or Judge thereof, and whose duties are increased by reason of the passing of this Act.

In case it shall appear to the Lord Chancellor that, by reason of the consolidation or abolition of offices under the provisions of this Act,

the continuance of the services of any officer holding during good behaviour, or during good behaviour subject to removal for cause by some Court or Judge, is unnecessary, the Lord Chancellor may, with the concurrence of the Treasury, make arrangements for the release of such officer from his duties, and thereupon it shall be in the power of the Treasury to award to such officer such compensation as, having regard to his period of service, to the tenure of the office held by him, the Treasury shall consider just and reasonable: Provided always, where such officer shall have served for any period not exceeding fifteen years, the amount so to be awarded shall not be more than one half of the salary and emoluments of the office held by him, and for each year of completed service exceeding fifteen years there shall be awarded in addition one thirtieth part of the salary and emoluments of the office, but in no case shall the sum awarded exceed three fourth parts of the salary and emoluments of such office: Provided also, that in addition to any compensation to be awarded under the foregoing provisions the Lord Chancellor, with the concurrence of the Treasury, may award to any officer having by statute any right of succession to a position of higher rank and emolument such further compensation in respect of such right as, having regard to the circumstances of the case and to the amount awarded under the foregoing provisions, shall appear just and reasonable: Provided also, that no such officer appointed before the passing of this Act shall be so released without his consent.

In every case in which the compensation awarded under such special circumstances, affecting the tenure or position of an officer as are above referred to, shall exceed the amount which might be awarded under the provisions of the seventh section of the Superannuation Act, 1859, without a special minute being laid before Parliament, the compensation shall be awarded by special minute of the Treasury, stating the reasons for it, and a copy of the minute shall be laid before Parliament within fourteen days of the date of the minute, if Parliament be then sitting, or if not, then within fourteen days of its next meeting.

Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, and whose emoluments or statutory rights of promotion or succession are affected by the passing of this Act, shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

A.D. 1877.

Appointment of future officers of Supreme Court.

74. Subject to the provisions in this Act contained as to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, shall within two years from the commencement of the Act, determine what officers, clerks, or other persons holding subordinate positions, requisite for the permanent organisation of the official staff of the Supreme Court, and every court and division thereof, shall be retained or employed; and may, with the like concurrence, abolish any unnecessary office, or reduce, or in case of additional duties increase, the salary of an office, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge: Provided always, that if and when under the provisions of this Act any office shall be abolished to which any junior officer shall have by statute a direct or qualified right of succession, such compensation shall be given to such last-mentioned officer in respect of the loss of such right of succession as to the Lord Chancellor, with the concurrence of the Treasury, shall seem just.

When a vacancy occurs in any office after the passing of this Act, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor given with the concurrence of the Treasury; and further the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of December one thousand eight hundred and seventy-nine, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office.

Subject to the provisions of this Act preserving their patronage to existing Judges, all offices which may not be abolished in manner aforesaid shall continue, and shall when vacant be filled up in manner following:

All officers attached to the High Court, or the Chancery Division thereof, who have been heretofore appointed by the Master of the Rolls or Vice-Chancellor, shall continue, while so attached, to be appointed by the Master of the Rolls and Vice-Chancellor and their successors respectively in the same manner and on the same conditions and occasions as heretofore.

All officers of the Chancery Division attached to the Land Judges, heretofore appointed by such Judges, or who under the provisions of this Act shall be attached to the Land Judges, shall be appointed by them with such approval as heretofore.

All other officers attached to the Divisions of the High Court shall be appointed for each such Division by the President thereof.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Provided always, that no person shall be appointed after the passing of this Act to any junior clerkship in any division of the High Court unless he shall have received a certificate of fitness from the Civil Service Commissioners, or unless he shall be a practising barrister or solicitor, or shall have been employed at the time of the passing of this Act in one of the Superior Courts.

Subject to these provisions, all officers assigned to perform duties with respect to the Supreme Court of Judicature generally, or attached to the High Court of Justice generally, or the Court of Appeal, and all Commissioners to take oaths or affidavits in the Supreme Court, or for whose appointment other provision is not expressly made in this section, shall be appointed by the Lord Chancellor.

Any statutable power existing at the passing of this Act to enable any officer or officers of any court to appoint to any office, or to employ any persons in duties appertaining to any office, is hereby repealed, and the right of appointing to such offices, if they shall be continued, shall vest, in the case of offices attached to Divisions, in the Presidents of the Divisions, and in all other cases in the Lord Chancellor, but no vacancy in any of such offices shall be filled without the concurrence of the Treasury. Nothing herein contained shall affect or be taken as affecting the right of appointment at present vested in the district registrars of the Court of Probate, under the Act twentieth and twenty-first Victoria, chapter seventy-nine, section one hundred and fourteen.

Any qualification required for appointment to any office by any statute in force at the commencement of this Act shall continue.

Any officer of the Supreme Court of Judicature, or of the Court of Appeal, or of the High Court, or of any Division or Judge thereof (other than such officers attached to the person of a Judge as are removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court of Judicature, and of the Court of Appeal and of the High Court of Justice, over all or any of the officers attached to the said Courts, or any of them generally, with respect to any duties to be discharged by such officers respec-

A.D. 1877.

tively, may be exercised by the Lord Chancellor, and over the officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

Powers of Commissioners to administer oaths.

75. Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

Receiver Master.

76. After the passing of this Act no successor to the existing Receiver Master shall be appointed; and it shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor, to release the existing Receiver Master from the further discharge of his duties in the same manner, and upon the same terms, as the Lord Chancellor was empowered to release the other Masters by the Chancery (Ireland) Act, 1867; and upon the death, resignation, or release of such existing Receiver Master, the powers and duties in lunacy matters vested in and performed by the Receiver Master other than those connected with the management of land shall be exercised and performed by the Lord Chancellor, and the officers attached to him according to the course of procedure in the Chancellor's court and offices, and the powers and duties vested in and performed by such Receiver Master in reference to the management of landed estates, and the supervision and control of receivers over the same, shall be exercised by the Land Judges, and all matters and business which shall be then pending in the office of such Receiver Master in reference to receivers appointed over any estate by or in pursuance of any order of the Court of Chancery, or any of the Judges or Masters thereof, or of the Lord Chancellor entrusted by the Queen's Sign Manual with jurisdiction in Lunacy, and the accounting of such receivers and the letting and management of the estates over which any such receiver shall have been appointed shall be thereupon transferred to the said Land Judges, and shall thenceforth, subject to any Rules of Court to be made by the Lord Chancellor, with the concurrence of the Land Judges or either of them, be prosecuted and conducted before such Judges or one of them in the same manner as the same would have been prosecuted or conducted before the Receiver Master if this Act had not been passed; and all matters and business, other than as aforesaid and other than the audit of public accounts, which shall be then pending in the office of such Receiver Master, shall,

subject to Rules of Court and to the power of transfer, be distributed among the Judges of the Chancery Division of the said High Court as the Lord Chancellor, with the concurrence of any two of the Judges of the said Division, shall direct.

Any references to appoint receivers over land which may be made by any Judge of the High Court of Justice, including the Lord Chancellor entrusted in Lunacy as aforesaid, after the death, resignation, or release of said Receiver Master shall be made to the said Land Judges, or one of them, and the accounting of the receivers appointed either under such references or by the Land Judges themselves, or by any other Judge, and the control of such receivers, and the management of the estates over which they shall be appointed, shall be exercised by the Land Judges.

Provided always, that nothing herein contained shall prevent any Judge, or the Lord Chancellor intrusted in Lunacy as aforesaid, from himself appointing a receiver over land, or over personal estate other than land, in any case in which he shall think it expedient to do so, and in any such case the Judge may, if he shall think it expedient, and in all cases in which he shall appoint a receiver over personal estate other than land he shall, by order direct that all subsequent proceedings with regard to such receiver shall be taken in his own Court, and thereupon all such proceedings shall be taken before such Judge or his officers.

Appeals from any orders made by the said Land Judges with regard to any matters connected with Receivers or the management of land shall lie to the Court of Appeal and not to the Court or Judge by whom reference to them to appoint or take the accounts of a Receiver shall have been made, and no order so made shall require to be confirmed by such last-mentioned Court or Judge.

Subject to any Rules of Court and unless the Court or Judge by whom any such reference shall be made shall otherwise order, all sums of money received by any receiver shall, after payment of or providing for the necessary outgoings of and allowances in respect of the estate over which he shall be so appointed, be lodged to the credit of the cause or matter in which the reference to the Land Judges shall have been made, or shall be paid by said Receiver according to the orders of the Judge to whom such cause or matter is attached.

The jurisdiction to audit certain public accounts (including accounts of the Commissioners of Charitable Donations and Bequests

A.D. 1877.

in Ireland), and every other jurisdiction (if any) not in reference to causes, matters, or proceedings in Chancery, now vested in the Receiver Master, shall (unless the Lord Lieutenant in Council shall otherwise direct), after the death, resignation, or release of the existing Receiver Master, vest in and be exercised by the Local Government Board for Ireland. It shall be lawful for the Lord Lieutenant in Council at any time and from time to time after the passing of this Act to make such rules and regulations as to the Lord Lieutenant in Council shall seem fit for providing for the complete, proper, and efficient exercise by the Local Government Board, or by such other authority or authorities, or person or persons, as by the Lord Lieutenant in Council may be appointed in that behalf, of the jurisdiction or jurisdictions aforesaid.

The officers connected with the office of the Receiver Master shall (subject to the provisions herein-after contained) be transferred and attached to the Land Judges, and the said officers shall be employed in duties similar or analogous to those which they at present discharge; and they shall hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, and such salaries and pensions shall be chargeable upon and payable out of the same funds as if this Act had not been been passed.

Notwithstanding anything herein-before provided, it shall be lawful for the Lord Lieutenant in Council to transfer and attach to the Local Government Board, or to any other authority or person appointed to exercise any jurisdiction now vested in the Receiver Master, any of the said officers heretofore engaged in the performance of duties connected with any jurisdiction which shall, under or in pursuance of this Act, be vested in such board, authority, or person, and to require any of the said officers to perform such duties connected with the said jurisdiction, and similar or analogous to those which they at present perform, in such manner, and subject to such authority and control, as the Lord Lieutenant in Council may prescribe, and also to require any of the officers hereby transferred and attached to the Land Judges to give assistance, by the discharge of any duties similar or analogous to those which they at present discharge, to the Local Government Board or any other authority or person exercising any jurisdiction which shall under or in pursuance of this Act be vested in such board, authority, or person, at such times, in such manner, and subject to such control and conditions as the Lord Lieutenant in Council may prescribe.

Provided also, that all the powers relating to existing officers of the courts and to the reorganization and new arrangement of offices herein contained shall also apply to the officers of the Receiver Master. A.D. 1877.

General orders shall be made by the Lord Chancellor with the concurrence of the Land Judges, or either of them, to regulate the practice and procedure connected with the matters the subject of this section.

The duties imposed upon the Land Judges by this section (so long as there shall be two such Judges) shall be discharged by the junior Judge for the time being; and in distributing the other business of the Land Judges between them, regard shall be had to this provision.

The Lord Lieutenant, with the consent of the Lord Chancellor, may, if he shall think fit before the commencement of this Act, exercise the powers by this section conferred with respect to the release of the Receiver Master from the further discharge of his duties, and in such case or in case of vacancy in the office before the commencement of this Act, the several provisions in this section contained shall take effect, and such of the same as relate to the Land Judges shall be applicable and shall apply to the Judges of the Landed Estates Court, and such as relate to the Judges of the Chancery Division shall be applicable and shall apply to the Judges of the Court of Chancery.

Salaries and pensions of officers.

77. There shall be paid to every salaried officer appointed in pursuance of this Act such salary out of moneys provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Clerks of Assize and Nisi Prius.

78. Clerks of Assize and Nisi Prius on circuit may be appointed and paid in the same manner as heretofore. Clerks of Nisi Prius

A.D. 1877.

in Dublin may be appointed by the existing Chief Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions, and shall be paid as heretofore; but such right of appointment shall not be continued to their successors, and other provisions shall be made for the discharge of the duties now discharged by such clerks, under the provisions of this Act relating to future offices of the High Court.

Solicitors and attorneys.

79. From and after the commencement of this Act, all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Court of Judicature, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Court of Judicature and shall be admitted by the Lord Chancellor, and shall, so far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Court of Judicature; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

PART VI.

Jurisdiction of Inferior Courts.

Rules of to apply to inferior Courts.

80. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts.

A.D. 1877.

PART VII.

Miscellaneous Provisions.

Transfer of books and papers to Court of Judicature.

81. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court of Judicature, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Court making such order.

Saving as to circuits, &c.

82. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Court of Judicature who are now officers of the Courts of Common Law in Ireland, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to Lord Chancellor.

83. This Act, except so far as herein is expressly directed, shall not affect the office of Lord Chancellor, nor the rank, salary, or pension attached to such office; and the officers in the Lunacy Department, and the officers personally attached to or connected with the Lord Chancellor, shall continue attached to him in the same manner as if this Act had not passed; and all duties which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Court of Judicature, and by his successors. It shall be in the power of the Lord Chancellor, with the concurrence of the Treasury, to abolish, or alter the duties and designation of any offices whether in the Lunacy Department or attached to himself, and to fix the salaries of such as shall be retained, but so that no existing officer holding office during good behaviour shall receive a less salary than heretofore, or hold office otherwise than he did before.

Provisions as to Great Seal being in commission.

84. When the Great Seal of Ireland is in commission, the Lords Commissioners shall represent the Lord Chancellor for the

A.D. 1877.

purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

PART VIII.

Fixing and collection of fees in High Court and Court of Appeal.

85. The Lord Chancellor, with the advice and consent of the other Presidents of the Divisions of the High Court, or any one of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages to be taken in the High Court of Justice or in the Court of Appeal, or any office connected therewith, or by any officer of those courts or the Lord Chancellor, or other judge of those courts which officer is paid wholly or partly out of public moneys, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages, and appoint new fees and per-centages, to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed:

(1.) The fees and per-centages shall (except so far as the order may otherwise direct) be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by this order:

(2.) Such stamps shall be impressed or adhesive, as the Treasury may from time to time direct:

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of adhesive stamps, and for keeping accounts of such stamps:

(4.) Any document which ought to bear a stamp in pursuance of this Act, or any order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped within the time prescribed by the rules under this section regulating the use of stamps, but if any such document shall, through mistake or inadvertence, be received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed; and on such document being stamped accordingly, the same, and every proceeding relating thereto, shall be as valid as if such document had been properly stamped in the first instance; provided that no document shall be stamped as aforesaid contrary to the provisions of any other Act of Parliament for the time being in force, nor without payment of any penalty prescribed by any such Act:

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act, and under any orders made in pursuance thereof, as the Treasury may from time to time direct, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken and accounted for in the existing manner.

A.D. 1877.

PART IX.

Unclaimed Dividends in Bankruptcy.

Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

86. From and after the passing of this Act, sections eighty-four, and two hundred and ninety-seven of the Irish Bankrupt and Insolvent Act, 1857, shall be and the same are hereby repealed, and the following provisions shall thereupon be in force and have effect:

As soon as may be after the passing of this Act, the Governor and Company of the Bank of Ireland shall, upon an order of the Lord Chancellor to be made in that behalf, transfer to the account of the Commissioners for the Reduction of the National Debt at the Bank of England, all Government securities standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankruptcy and Insolvent Act, 1857.

As soon as the said Government securities have been so transferred, the Treasury shall by warrant direct the Governor and Company of the Bank of England to cancel such securities in their books.

The cash standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankrupt and Insolvent Act, 1857, or so much of the same as shall be determined by the Treasury, and all dividends and all moneys the produce of any bankrupt, arranging debtors, or insolvent estate which shall from time to time after the passing of this Act be paid into or transferred to the credit of the "Unclaimed Dividend Account" under the provisions of section two hundred and ninety-five of the Irish Bankrupt and Insolvent Act, 1857, and which have remained unclaimed for a period of not less than five years from the time on which the same have been respectively paid into or transferred to the said account, shall be from time to time paid to the account of the Commissioners for the Reduction of the National Debt, in such manner as the Treasury may direct. The Commissioners for the Reduction of the National Debt shall apply all cash transferred to their account in pursuance of this section in reduction of the National Debt in the same manner as the moneys issued to them under the Sinking Fund Act, 1875.

Where any Court having jurisdiction in the matter of bankruptcy is satisfied that any person claiming is entitled to any dividend or other payment out of the moneys carried to the account of the said Commissioners under the provisions of this section, such Court may

order payment of the same in like manner as it might have done if the same had not been carried to the said last-mentioned account. In case the moneys standing to the credit of the said Unclaimed Dividend Account shall at any time be insufficient to meet the payments to be made out of the same, the Treasury shall issue out of the Consolidated Fund, or out of the growing produce thereof, such sum as may appear to them to be necessary to provide for the said payments. A.D 1877.

All salaries, allowances, damages, costs, and expenses before the passing of this Act charged on and payable out of the said Unclaimed Dividend Account, or the interest and profit arising therefrom, shall, from and after the passing of this Act, be paid out of moneys to be provided by Parliament for such purpose.

PART X.

Final Appeal.

Final appeal to the House of Lords.

87. All decisions, judgments, decrees, or orders of the Court of Appeal shall be subject to appeal to the House of Lords, in the cases and under the conditions in and under which the like decisions, decrees, judgments, or orders of the Court of Appeal in Chancery in Ireland, or of the Court of Exchequer Chamber in Ireland, would have been subject to appeal to the House of Lords or to the Queen in Council if this Act had not been passed, or as may be directed by any Act of Parliament affecting the Appellate jurisdiction of the House of Lords, or any powers therein contained.

Except as herein-before provided with respect to error in certain cases on the Crown side of the Queen's Bench Division, error or appeal from any judgment, decree, or order, subsequent to the commencement of this Act, of the High Court of Justice, or any Division or Judge thereof, or of the Courts of Admiralty or Bankruptcy, or any Judge of the same respectively, may be brought only to the Court of Appeal constituted by this Act, and not directly to the House of Lords or Queen in Council, any previous law or usage to the contrary notwithstanding.

Nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords, or to the Queen in Council, from any prior judgment or order of any Court, whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

SCHEDULE.

The following are the Rules referred to in the sixty-second section of this Act:—

Form of Action and Summons.

(Form of action in High Court.)

1. All actions which have hitherto been commenced by writ of summons and plaint in the Superior Courts of Common Law in Ireland, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, shall be instituted in the High Court of Justice by a proceeding to be called an action.

All other proceedings in and applications to the High Court may, subject to rules of court, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

Writ of Summons.

(Actions to be commenced by writ.)

2. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

3. Every writ of summons and the indorsement thereon may be in one of the forms herein-after referred to, and any costs incurred by the use of any more prolix or other forms of writs or of indorsements thereon than the forms herein-after referred to shall be borne by the party using the same, unless the court shall otherwise prescribe.

4. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of Ireland.

5. The indorsement of claim shall be made on every writ of summons before it is issued.

6. In the indorsement it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may, by leave of the court or judge, amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief. If none of the forms herein-after referred to shall be applicable to the case, such other similarly concise form may be used as the nature of the case may require.

7. Writs of summons shall be prepared by the plaintiff or his solicitor in such manner as shall be directed by rules, and shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

8. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

9. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, in such manner as shall be directed by rules.

10. Except as otherwise provided by this Act, all writs of summons shall be served in the same manner respectively as process from the court whose jurisdiction is transferred to the High Court might have been served if this Act had not been passed, and the High Court shall have the same power of directing substitution of service, or that any service already made should be deemed good, or that notice should be substituted for service, as might have been exercised by the said courts respectively if this Act had not been passed.

11. Service of a writ of summons to recover possession of land may be made in the same manner as a summons and plaint in ejectment might have been served if this Act had not been passed.

Interpleader.

12. The procedure and practice used before the passing of this Act with respect to interpleader by Courts of Common Law in Ireland shall apply to all the Divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

A.D. 1877.

Appearance.

13. The defendant shall be bound to appear to the writ of summons at such time and in such manner as may be directed by rules.

14. It shall not be necessary for the defendant on entering an appearance to any writ of summons to file any defence or answer thereto. He shall enter an appearance by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

The solicitor of a defendant appearing by a solicitor shall state in such memorandum his registered residence.

A defendant appearing in person shall state in such memorandum his address, and a place to be called his address for service, which shall be within the city of Dublin.

15. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff.

16. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

17. Any person not named as a defendant in a writ of summons for the recovery of land may, by leave of the court or judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

18. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Parties.

19. No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by rules, and on such terms as may appear to the court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to

have been joined, or whose presence before the court may be necessary in order to enable the court effctually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in such manner as may be prescribed by rules or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Pleading.

20. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall, within such time and in such manner as may be directed by rules, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall, within such time and in such manner as may be directed as aforesaid, deliver to the plaintiff a statement of his defence, set off, or counter claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set off, or counter claim. Such statements shall be as brief as the nature of the case will admit, and the court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

21. A defendant in an action may set off or set up by way of counter claim against the claims of the Plaintiff, any right or claim, whether such set off or counter claim sound in damages or not, and such set off or counter claim shall have the same effect as a statement of claim in a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set off or counter claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

22. Every pleading shall, unless when otherwise provided by rules, contain as concisely as may be, a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into

A.D. 1877.

paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures, and not in words. Signature of counsel shall not be necessary.

23. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief; and the same rule shall apply to any counter claim made, or relief claimed, by the defendant in his statement of defence. If the plaintiff's claim be for discovery only, the plaintiff's claim shall show it.

24. It shall not be sufficient for a defendant, unless where otherwise provided by rules, in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by a way of counter claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

25. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds, or otherwise.

26. Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

27. The court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties; and all parties shall have also such further powers of amendment as may be prescribed by rules.

28. A demurrer to any statement may be filed in such manner and form as may be prescribed by rules.

29. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the court or a judge at any later time, pay into court a sum of money by way

of satisfaction or amends. Payment into court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

30. The parties may, as may be directed by rules, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the court.

New Trial Motions.

31. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the court may give final judgment as to part thereof, and direct a new trial as to the other part only, and a new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

Appeals.

32. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by such notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

33. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

34. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together

A.D. 1877.

with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

35. It shall not under any circumstances be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the court below should be varied, he shall, within such time as may be prescribed by rules, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may in the discretion of the court be ground for an adjournment of the appeal, or for a special order as to costs.

36. The forms of writs and pleadings referred to in these rules are the forms prescribed in the several appendices to "The Supreme Court of Judicature Act, 1875."

Exceptions from the Rules.

37. Nothing in these rules shall affect the practice or procedure in any of the following causes or matters:—

Criminal proceedings.

Proceedings on the Crown side of the Queen's Bench Division.

Proceedings on the Revenue side of the Exchequer Division.

Proceedings in the Probate and Matrimonial Division.

Proceedings before the Land Judges of the Chancery Division.

Supreme Court of Judicature (Ireland).

A

B I L L

[AS AMENDED IN COMMITTEE]

For the constitution of a Supreme Court Judicature, and for other purposes relati to the better Administration of Justice, Ireland.

(*Prepared and brought in by Mr. Solicitor-General for Ireland and Sir Michael Hicks-Beach.*)

Ordered, by The House of Commons, *to be Printed,* 4 *June* 1877.

[Bill 184.]

Under 9 *oz.*

Supreme Court of Judicature (Ireland) Bill.

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT.]

ARRANGEMENT OF CLAUSES.

Preliminary.

Clauses.

1. Short title.
2. Commencement of Act.
3. Interpretation of terms.

PART I.

Constitution and Judges of Court of Judicature.

4. Union of existing Courts into one Supreme Court of Judicature.
5. Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.
6. Constitution of High Court of Justice in Ireland.
7. As to Judges of Landed Estates Court.
8. As to Judges of Court of Bankruptcy.
9. Existing Judge of Admiralty.
10. Constitution of Court of Appeal.
11. Vacancies by resignation of Judges and effect of vacancies generally.
12. Qualifications of Judges.
13. Tenure of office of Judges, and oaths of office.
14. Precedence of Judges.
15. Saving of rights and obligations of existing Judges.
16. Provisions for extraordinary duties of Judges of the former Courts.
17. Salaries of certain existing Judges.
18. Salaries of future Judges.
19. Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.
20. Salaries and pensions how to be paid.

PART II.

Jurisdiction and Law.

Clauses.
21. Jurisdiction of High Court of Justice.
22. Jurisdiction not transferred to High Court.
23. Jurisdiction transferred to Court of Appeal.
24. Appeals from High Court.
25. Transfer of pending business.
26. Rules as to exercise of jurisdiction.
27. Law and equity to be concurrently administered.
28. Rules of law upon certain points. Administration of assets of insolvent estates. Statutes of Limitation inapplicable to express trusts. Equitable waste. Merger. Suits for possession of land by mortgagors. Assignment of debts and choses in action. Stipulations not of the essence of contracts. Injunctions and receivers. Damages by collisions at sea. Infants. Cases of conflict not enumerated.

PART III.

Sittings and Distribution of Business.

29. Abolition of terms.
30. Vacation.
31. Sittings in vacation.
32. Jurisdiction of Judges of High Court on Circuit.
33. Sittings for trial by jury in Dublin.
34. Divisions of the High Court of Justice.
35. Rules of Court to provide for distribution of business.
36. Assignment of certain business to particular Divisions of High Court, subject to Rules.
37. Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.
38. Power of transfer.
39. Directions as to procedure before Land Judges.
40. Sittings in Dublin and on Circuits.
41. Provisions of 21 & 22 Vict. c. 27, and of 25 & 26 Vict. c. 46, to apply to this Act.
42. Rota of Judges for election petitions.
43. Powers of one or more Judges not constituting a Divisional Court.

Clauses.
44. Divisional Courts of the High Court of Justice.
45. Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.
46. Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.
47. Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.
48. Land cases reserved.
49. Provision for Crown cases reserved.
50. Motions for new trials to be heard by Divisional Courts.
51. What orders shall not be subject to appeal.
52. Costs.
53. As to discharging orders made in Chambers.
54. Provision for absence or vacancy in the office of a Judge.
55. Power of a single Judge in Court of Appeal.
56. Constitution of Court of Appeal when hearing Appeals.
57. Arrangements for business of Court of Appeal.

PART IV.

Trial and Procedure.

58. Assessors.
59. Provision as to making of Rules of Court before or after the commencement of the Act.
60. Circuits and Assizes.
61. Winter Assizes.
62. Rules of Courts of Probate and for Matrimonial Causes to be Rules of the High Court.
63. Criminal procedure, subject to future Rules, to remain unaltered.
64. Act not to affect rules of evidence.
65. Saving of existing procedure of Courts when not inconsistent with this Act or Rules.
66. Additional power as to regulation of practice and procedure by Rules of Court.

Clauses.
67. Orders and Rules to be laid before Parliament, and may be annulled on address from either House.
68. Councils of Judges to consider procedure and administration of justice.
69. Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

PART V.

Officers and Offices.

70. Transfer of existing staff of officers to Court of Judicature.
71. Appointment of future officers of Supreme Court.
72. Powers of commissioners to administer oaths.
73. Receiver Master.
74. Salaries and pensions of officers.
75. Clerks of Assize and Nisi Prius.
76. Solicitors and attorneys.

PART VI.

Jurisdiction of Inferior Courts.

77. Rules of law to apply to inferior Courts.

PART VII.

Miscellaneous Provisions.

78. Transfer of books and papers to Court of Judicature.
79. Saving as to circuits, &c.
80. Saving as to Lord Chancellor.
81 Provisions as to Great Seal being in commission.

PART VIII.

82. Fixing and collection of fees in High Court and Court of Appeal.

PART IX.

Unclaimed Dividends in Bankruptcy.

Clauses.

83. Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

84. Application to extend receiver shall be made by summary motion to a Land Judge unless otherwise ordered by Judge.

85. The Superior Courts may remit to the Civil Bill Court ejectments brought in High Court of Judge.

PART X.

Final Appeal.

86. Final appeal to House of Lords.

Schedule.

A

B I L L

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT]

FOR

The constitution of a Supreme Court of Judicature, and for other purposes relating to the better Administration of Justice, in Ireland. A.D. 1877.

WHEREAS it is expedient to constitute a Supreme Court of Judicature, and to make provision for the better administration of justice, in Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act (Ireland), 1877."

Commencement of Act.

2. This Act, except where otherwise expressly provided, shall commence and come into operation on the first day of January one thousand eight hundred and seventy-eight.

Interpretation of terms.

3. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several expressions herein-after mentioned shall have, or include, the meanings following; (that is to say,)

"High Court of Chancery" and "Court of Chancery" respectively shall mean the High Court of Chancery in Ireland, and shall include the Lord Chancellor.

"Court of Queen's Bench" shall mean the Court of Queen's Bench in Ireland.

"Court of Common Pleas" shall mean the Court of Common Pleas in Ireland.

"Court of Exchequer" shall mean the Court of Exchequer in Ireland.

"High Court of Admiralty" shall mean the High Court of Admiralty of Ireland.

A.D. 1877.

"Court of Probate" shall mean the Court of Probate in Ireland.

"Court for Matrimonial Causes and Matters" shall mean the Court for Matrimonial Causes and Matters in Ireland.

"Landed Estates Court" shall mean the Landed Estates Court, Ireland.

"Court of Bankruptcy" shall mean the Court of Bankruptcy in Ireland.

"Lord Lieutenant" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the time being.

"Lord Chancellor" shall mean Lord Chancellor of Ireland, and shall include Lords Commissioners and Lord Keeper of the Great Seal of Ireland.

"The Lord Chief Justice" shall mean the Lord Chief Justice of Ireland.

"Master of the Rolls" shall mean the Master of the Rolls in Ireland.

"Lord Justice of Appeal" shall mean the Lord Justice of Appeal in Chancery in Ireland.

"Vice-Chancellor" shall mean the Vice-Chancellor of Ireland.

"High Court" shall mean Her Majesty's High Court of Justice in Ireland established by this Act.

"Court of Appeal" shall mean Her Majesty's Court of Appeal in Ireland established by this Act.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by or in the name of the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by cause, action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the Record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in Criminal Trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

"Registration of Voters Acts" shall mean the Act of the session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter sixty-nine, and all other Acts or parts of Acts relating to the registration or qualification of persons entitled to vote at the election of members to serve in Parliament for Ireland.

"Land" shall have the same meaning as in the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-two, intituled "An Act to facilitate the sale and transfer of land in "Ireland."

"Officers" shall include "clerks."

PART I.

Constitution and Judges of Court of Judicature.

Union of existing Courts into one Supreme

4. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned, (that is to say,) The High Court of Chancery, the Court of Queen's Bench, the

A.D. 1877.

Court of Judicature.

Court of Common Pleas, the Court of Exchequer, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in Ireland.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

5. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice in Ireland," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal in Ireland," shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

Constitution of High Court of Justice in Ireland.

6. Her Majesty's High Court of Justice in Ireland shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the Vice-Chancellor, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, the Judge of the Court of Probate and of the Court for Matrimonial Causes and Matters, and the Judges of the Landed Estates Court, except such, if any, of the aforesaid Judges as shall be appointed an ordinary Judge of the Court of Appeal.

The Lord Chancellor shall be appointed and shall hold his office in the same manner as heretofore.

Whenever the office of a Judge of the said High Court, other than the Lord Chancellor, shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent.

All persons to be hereafter appointed to fill the places of the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge, other than the Lord Chancellor and the Judges last-mentioned, who shall be appointed to fill the place of any Judge of the High Court of Justice, shall be styled in his appointment "Judge of Her Majesty's High Court of Justice in Ireland."

The vacancy now existing in the office of Puisne Justice of the Court of Common Pleas, and any vacancy which may exist at the time of the passing of this Act in the office of Junior Baron of the

Court of Exchequer, or in case there be no such vacancy at that time, then the first such vacancy which shall occur after the passing of this Act, shall not be filled up.

Provided always, that when first after the commencement of this Act one of the existing Judges of the Landed Estates Court shall die, resign, or otherwise vacate his office, the vacancy thus occasioned shall not be filled up until a Commission shall have been issued by Her Majesty under her Royal Sign Manual to ascertain and report whether the business in connexion with the Division of the High Court of Justice (herein-after termed the Chancery Division) makes it requisite that such appointment should be made, nor until the expiration of a period of forty days after the date of such report, if Parliament be then sitting, and if Parliament be not then sitting, until the expiration of a period of forty days after the commencement of the then next Session of Parliament.

All the Judges of the Supreme Court shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law in Ireland, and shall have in all respects, save as in this Act otherwise expressly provided, equal power, authority, and jurisdiction.

The Lord Chancellor for the time being, or in his absence the Lord Chief Justice for the time being, shall be President of the High Court of Justice.

As to Judge of Landed Estates Court.

7. The jurisdiction exercised by the Judges of the Landed Estates Court shall continue to be exercised by them, and by the Judges who may from time to time be appointed to succeed them, and, in the case of illness, absence, or other inability of them or either of them to discharge their duties, or of a vacancy in the office of the said Judges or either of them, by any other Judge of the Chancery Division of the High Court.

If the state of business, in connexion with their peculiar jurisdiction shall permit, the said Judges shall in addition be bound from time to time to assist in the general business of the Chancery Division.

The existing Judges of the Landed Estates Court and their successors shall be Judges of the said Chancery Division, and shall be distinguished as the Land Judges of the said Division. The rules and orders and practice of the Landed Estates Court shall continue to be used in proceedings for the sale or partition of estates, declaration or record of titles, and all other proceedings which would have been within the exclusive cognizance of the Landed Estates Court if this Act had not passed, before the Land Judges, unless

A.D. 1877.

and until altered by the Lord Chancellor and the said Judges. The Lord Chancellor and the Land Judges, or either of them, may from time to time alter the rules and orders and practice in all proceedings before the Land Judges, and make new rules and orders for the regulation of such practice and proceedings, and for the distribution of business between the Land Judges. All rules made in pursuance of this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner, as is in the sixty-seventh section of this Act provided.

There shall be a separate seal for the Land Judges, and conveyances executed with this seal shall have the same force as those executed with the seal of the Landed Estates Court.

As to Judges of Court of Bankruptcy.

8. The existing Judges of the Court of Bankruptcy and their successors in such offices respectively shall be appointed in the same manner as heretofore, and shall, as to tenure of office, rank, title, patronage, rights, privileges, and powers of appointment and dismissal, salary, pension, jurisdiction, powers, and authority respectively, remain and be in the same condition and be liable to discharge the same duties respectively, and none other, as if this Act had not been passed.

The practice and procedure of the Court of Bankruptcy, and the powers to make rules and orders regulating the same, shall continue and be exercised in the same manner as if this Act had not been passed. The tenure, salaries, pensions, rights, privileges, and duties of the officers of the said Court shall also continue the same as if this Act had not been passed.

Appeals from orders of the Judges of the said Court shall lie to the Court of Appeal constituted by this Act, in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

Existing Judge of Admiralty.

9. The existing Judge of the High Court of Admiralty shall retain the same jurisdiction, authority, rights of patronage, and of dismissal, rank, and salary as if this Act had not been passed.

Appeals from his orders and decrees shall lie to the Court of Appeal constituted by this Act in the same manner and in respect of the same proceedings as heretofore to the Court of Appeal in Chancery, save so far as the procedure on appeals may be altered by any rules or orders to be made in pursuance of this Act.

When the existing Judge of the High Court of Admiralty shall die, resign, or otherwise vacate his office, no person shall be

appointed to succeed him in his said office, and thereupon the High Court of Admiralty in Ireland shall be united and consolidated with the Supreme Court of Judicature in Ireland, and all the jurisdiction vested in and capable of being exercised by the Judge of the said Court of Admiralty, and all causes and proceedings then pending in the said Court, shall be transferred to the High Court of Justice. The jurisdiction theretofore vested in and capable of being exercised by the Judge of the said Court of Admiralty shall thenceforth, and until the vacancy next ensuing after the passing of this Act in the office of the judge of the Probate and Matrimonial Division herein-after constituted shall be filled up by the appointment of a new judge, be vested in and may be exercised by such judge of the High Court appointed to be a judge since the first day of January one thousand eight hundred and seventy-four, or such judge of the High Court appointed before that day, and who shall consent thereto, as the Lord Lieutenant shall by order under his hand nominate in that behalf.

The power of nomination conferred by this section upon the Lord Lieutenant may be exercised by him in the manner aforesaid at any time after the passing of this Act, and thereafter from time to time whenever any judge so nominated by him shall die, or resign, or become incapable of executing the duties so imposed upon him.

In case any judge appointed before the said first day of January one thousand eight hundred and seventy-four shall be so nominated, he shall be paid for the performance of the duty so imposed upon him such additional salary as the Lord Lieutenant, with the consent of the Treasury, shall appoint.

Upon the filling up of the vacancy next ensuing after the passing of this Act in the office of the judge of the Probate and Matrimonial Division herein-after constituted by the appointment of a new judge, all the jurisdiction then vested in any judge nominated in that behalf by the Lord Lieutenant in pursuance of the preceding provisions of this section, shall be transferred to and vested in and may be exercised by such new judge, and the power of nomination conferred by this section upon the Lord Lieutenant shall thereupon cease; and all causes and proceedings in Admiralty, whether so transferred or afterwards commenced, shall proceed and be heard before the judge in whom such Admiralty jurisdiction shall for the time being be vested under the preceding provisions of this section. Until such transfer of jurisdiction to the High Court of Justice as aforesaid the Lord

A.D. 1877

Chancellor, with the concurrence of the Treasury, shall, on vacancy in the offices of the Admiralty Court, make provision for the temporary discharge of the duties of such offices.

Constitution of Court of Appeal.

10. Her Majesty's Court of Appeal in Ireland shall be constituted as follows: There shall be five ex-officio Judges thereof, and two ordinary Judges, who shall from time to time be appointed by Her Majesty. The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lord Justice of Appeal in Chancery, and such other person as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either before or after the commencement of this Act, and if made before shall take effect from the commencement of this Act, and may be made upon the terms as to salary and otherwise, and subject to the conditions and in the manner provided by the "Chancery Appeal Court (Ireland) Act, 1856," in respect of the office thereby created.

Besides the said ex-officio Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit) to appoint under Her Royal Sign Manual as additional Judges of the Court of Appeal any persons who, having held the office of Lord Chancellor or of Chief Justice, Master of the Rolls, Chief Justice of the Common Pleas, or Chief Baron of the Exchequer in Ireland, shall signify in writing their willingness to serve as such additional Judges.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent, as provided by the "Chancery Appeal Court (Ireland) Act, 1856."

The Lord Chancellor for the time being shall be President of the Court of Appeal. Except in matters which are by this Act, or by some other Act, specially reserved to the Lord Chancellor, he shall not be bound or required to exercise any of the functions of a Judge of the High Court, or of the Chancery Division of the same, unless he shall, by special order, direct that any matter shall be disposed of by himself, but all such matters shall be disposed of by one of the other Judges of the Chancery Division, and the Lord Chancellor

shall in relation to such matters exercise only the functions of a Judge of the Court of Appeal. A.D. 1877.

Vacancies by resignation of Judges and effect of vacancies generally.

11. The office of any Judge of the Court of Appeal or of any Judge of the High Court of Justice may be vacated by resignation in writing, under his hand, addressed to the Lord Lieutenant, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed to the office of ordinary Judge of the Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge.

Qualifications of Judges.

12. Any person who has practised for not less than ten years at the Bar of Ireland shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed Lord Justice of the Court of Appeal in Chancery in Ireland, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed to the office of ordinary Judge of the said Court of Appeal.

Tenure of office of Judges, and oaths of office.

13. Every Judge of the High Court of Justice other than the Lord Chancellor, and every ordinary Judge of the Court of Appeal, shall hold his office for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore. No Judge of the High Court of Justice, while he continues such Judge, shall hereafter, unless otherwise provided by Parliament, be appointed to any place of profit under the Crown other than a judicial appointment.

Precedence of Judges.

14. The ex officio Judges of the Court of Appeal shall rank in the Supreme Court of Judicature in Ireland in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal shall rank as provided by the "Chancery Appeal Court (Ireland) Act, 1856," and if otherwise of equal rank, between themselves according to the priority of their respective appointments. The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the ordinary Judges of the Court of Appeal, and among themselves (subject to

A.D. 1877.

the provisions herein-after contained as to existing Judges) according to the priority of their respective appointments.

Saving of rights and obligations of existing Judges.

15. Every existing Judge who is by this Act made a Judge of the High Court of Justice or ordinary Judge of the Court of Appeal shall, as to tenure of office, rank between himself and the other existing Judges, title, patronage, and powers of appointment and dismissal, and all other privileges and disqualifications, and also as to salary and pension, save as is herein provided, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, every such existing Judge shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed.

No Judge, whether of the High Court of Justice or of the Court of Appeal, who was appointed before the first of January one thousand eight hundred and seventy-five, except a Land Judge, shall be required, without his own consent, to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, or for the trial of crimes and offences, unless he was so liable by usage or custom at the time of the passing of this Act; but every Judge, whether of the High Court of Justice or of the Court of Appeal, appointed after the said date shall from and after the passing of this Act be capable and bound to act in such Commission, if named therein.

Service as a Judge in the High Court of Justice, or as an ordinary Judge in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

The provisions of this section shall not apply to the Lord Chancellor.

Provisions for extraordinary duties of Judges of the former Courts.

16. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of Justice in any Court whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the Judges or any Judge of any of such Courts, every Judge of the said High Court, except where otherwise expressly directed by this Act, shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power,

before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid upon the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Salaries of certain existing Judges.

17. From and after the time fixed for the commencement of this Act, there shall be paid to the existing Judges herein-after mentioned the following salaries; that is to say,

To the Master of the Rolls four thousand pounds a year.

To each of the Puisne Justices and Junior Barons three thousand eight hundred pounds a year.

To each of the Land Judges three thousand five hundred pounds a year.

Such salaries shall be instead of the salaries by law payable to such Judges immediately before such commencement, and such salaries shall be paid to such Judges respectively on the same days and in the same manner in every respect as their former salaries; the pension which may be granted to the existing Master of the Rolls shall be such as would be payable to him if this Act had not passed, and the pensions which may be granted to all other existing Judges shall be two thirds of the salaries which, after the commencement of this Act, shall be payable to them respectively.

Salaries of future Judges.

18. There shall be paid to Judges appointed after the commencement of this Act the following salaries, which shall in each case include any pension to which the Judge may be entitled in respect of any public office previously filled by him:

To the Lord Chief Justice five thousand pounds a year, and to the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, each, four thousand six hundred pounds a year.

To each ordinary Judge of the Court of Appeal such salary as in pursuance of the "Chancery Appeal Court (Ireland) Act, 1856," might have been assigned for him if he had been appointed under the said Act.

To each of the other Judges of the High Court of Justice, the sum of three thousand five hundred pounds a year.

The Chiefs of the Divisions termed in this Act the Queen's Bench, Common Pleas, and Exchequer Divisions, whether appointed before or after the commencement of this Act, and the other Judges of the same Divisions who were appointed before the commencement of this Act, shall not be entitled to any allowance in addition to

A.D. 1877.

their salaries in respect of circuit. Every other Judge of the High Court of Justice, or of the Court of Appeal, whether appointed before or after the commencement of this Act, who shall actually go circuit as a Judge shall be entitled to receive in respect of such circuit one hundred and fifty pounds. This last provision shall apply, immediately on the passing of this Act, to any Judge who, not being a Judge of a Common Law Court, shall be named in the commission and shall actually go circuit.

Any Judge, whether appointed before or after the passing of this Act, who shall be sent as Judge for a winter assizes or special commission shall be entitled to receive in respect thereof such additional payment, not exceeding the amount allowed for a circuit, as the Lord Lieutenant shall determine; but no Judge shall receive any additional or extra payment in respect of an adjourned assizes: Provided always, that nothing herein contained shall affect such rights to remuneration in respect of any special commission or adjourned assizes as the existing Lord Chief Justice, Chief Justice of the Common Pleas, and Lord Chief Baron possessed before the passing of this Act.

No salary shall be payable to any additional Judge of the Court of Appeal, but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

19. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice other than the Lord Chancellor and also to any ordinary Judge of the Court of Appeal appointed after the commencement of this Act who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life, of the amount following; (that is to say,)

In the case of the ordinary Judges of the Court of Appeal, the same amount of pension which might have been granted to the Lord Justice of the Court of Appeal in Chancery in Ireland if this Act had not passed:

In the case of the Judges of the High Court of Justice, two thirds of their respective salaries.

Salaries and pensions how to be paid.

20. The salaries, allowances, and pensions payable to the Judges of the High Court of Justice and the ordinary Judges of the Court of Appeal respectively under this Act shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof. Such salaries and pensions shall grow due from day to day, but shall be payable to

the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine. A.D. 1877.

PART II.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

21. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him or the Lord Chancellor in relation to the Court of Chancery as a Common Law Court, and including any jurisdiction of the Masters in Chancery:

(2.) The Court of Queen's Bench:

(3.) The Court of Common Pleas:

(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court:

(5.) The Court of Probate:

(6.) The Court for Matrimonial Causes and Matters:

(7.) The Landed Estates Court, including the control and direction of the Record of Title Office of the said Court, and all powers and authorities exercised by the Judges of the said Court, or any of them, under the Record of Title Act, 1865:

(8.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions herein-after contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, or by any Master of the Court of Chancery, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any

A.D. 1877.

such Judges or Judge, Masters or Master, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdictions so transferred.

Provided always, that nothing herein contained shall abridge or alter the jurisdiction conferred by any Act or Acts upon any Judge or Judges, Commissioner or Commissioners, of Assize.

Jurisdiction not transferred to High Court.

22. There shall not be transferred to or vested in the High Court of Justice, by virtue of this Act,

(1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the Court of Bankruptcy, or the High Court of Admiralty:

(2.) Any jurisdiction usually vested in the Lord Chancellor in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

(3.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of Ireland:

(4.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:

(5.) Any jurisdiction of the Master of the Rolls in relation to records in Dublin or elsewhere in Ireland.

Jurisdiction transferred to Court of Appeal.

23. The Court of Appeal shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,)

(1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court sitting as a Court of Appeal from the Court of Probate, the Court for Matrimonial Causes and Matters, the Landed Estates Court, the High Court of Admiralty, or the Court of Bankruptcy:

(2.) All jurisdiction and powers of the Court of Exchequer Chamber, including its appellate jurisdiction in appeals under the Registration of Voters Acts:

(3.) All jurisdiction and powers of the Court for Land Cases Reserved at Dublin under the provisions of the "Landlord and Tenant, Ireland, Act, 1870:"

(4.) Jurisdiction on writs of error in criminal cases on appeal from the Queen's Bench Division of the High Court of Justice. A.D. 1877.

Appeals from High Court.

24. The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as herein-after mentioned, of the High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any Appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such Appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Transfer of pending business.

25. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the High Court of Justice and the Court of Appeal respectively shall cease to be exercised, except by the High Court of Justice and the Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or the Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the High Court of Justice and the Court of Appeal respectively, in the

A.D. 1877.

same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued as follows; (that is to say,) in the case of proceedings in Error or on Appeal, or of proceedings before the Court of Appeal in Chancery, or in the Court for Land Cases Reserved at Dublin, in and before the Court of Appeal; and, as to all other proceedings, in and before the High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be), down to the point at which the transfer takes place; and so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued in and before the said Courts respectively, either in the same or the like manner as they would have been continued in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the High Court of Justice and the Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

Rules as to exercise of jurisdiction.

26. The jurisdiction by this Act transferred to the High Court of Justice and the Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Law and equity to be concurrently administered.

27. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the rules following:

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or

to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose, properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit, instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed

A.D. 1877.

a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect

to, if this Act had not passed, by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Rules of law upon certain points.

28. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in Ireland as to the matters next hereinafter mentioned: Be it enacted as follows:

Administration of assets of insolvent estates.

(1.) In the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt in Ireland; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

A.D. 1877.

Statutes of Limitation inapplicable to express trusts.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. This provision, however, is not to affect the enactments contained in the tenth section of the Real Property Limitation Act, 1874, when the same shall come into effect.

Equitable waste.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Merger.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for possession of land by mortgagors.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sign and cause to be served notices to quit, determine tenancies, or accept surrenders thereof and sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person; and such action, suit, or proceeding shall not be defeated by proof that the legal estate in the lands the possession of which is sought to be recovered, or in respect of which the rents or profits are sought to be recovered, or in respect to which the trespass or other wrong has been committed, is vested in such mortgagee: Provided always, that a mortgagor shall not be at liberty to exercise any of the powers hereby conferred if an express declaration that they shall not be exercised is contained in the mortgage.

Assignment of debts and choses in action.

(6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor

would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Stipulations not of the essence of contracts.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have theretofore received in equity.

Injunctions and receivers.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made: and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Damages by collisions at sea.

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be

A.D. 1877.

found to have been in fault, the rules hitherto in force in the High Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants.

(10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

Cases of conflict not enumerated.

(11.) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III.

Sittings and Distribution of Business.

Abolition of terms.

29. The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to Rules of Court, the High Court of Justice, the Court of Appeal, and the Judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

Vacation.

30. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may, before the commencement of this Act, upon any report or recommendation of the Judges by whose advice the Lord Lieutenant is herein-after authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court herein-after mentioned, with the consent of the Lord Chancellor, from time to time make, revoke, or modify orders regulating the vacations to be observed by the High Court

of Justice and the Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed.

Sittings in vacation.

31. Provision shall be made by Rules of Court for the hearing, in Dublin, during vacation, by Judges of the High Court of Justice and the Judges of the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Jurisdiction of Judges of High Court on Circuit.

32. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other person or persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Dublin as herein-after in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

Sittings for trial by jury in Dublin.

33. Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Dublin, and such sittings shall, so far as is reasonably practicable, and subject to

A.D. 1877.

vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Dublin, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the High Court of Justice. Subject to Rules of Court, the plaintiff shall, in the document by which each cause shall be commenced, name the county or place in which he proposes that the cause shall be tried or proceeding shall take place, but the Court or a Judge may, in their or his discretion, direct the same to be tried in any other county or place; and, so far as shall be reasonably consistent with the convenient and speedy discharge of the business, every issue and question of fact to be submitted to a jury shall be tried in the county or place where the cause of action shall have arisen. Any order of a Judge as to the place of trial of any such issue or question may be discharged or varied by a Divisional Court.

Whenever application shall be made for leave to serve any document by which a cause may be commenced upon a defendant resident out of the jurisdiction of the Supreme Court, whether by serving such defendant personally or by substituting service upon another person for him, the Court or Judge to whom such application shall be made shall have regard to the amount or value of the claim or property affected, and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence; and no such leave shall be granted without an affidavit stating the particulars necessary for enabling the Court or Judge to exercise a due discretion in the manner aforesaid.

Divisions of the High Court of Justice.

34. For the more convenient despatch of business in the High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such Judges respectively as herein-after mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

(1.) One Division shall consist of The Lord Chancellor, who shall be President thereof, The Master of the Rolls, The Vice-Chancellor and the Judges of the Landed Estates Court;

(2.) One other Division shall consist of The Lord Chief Justice, who shall be President thereof, and the other Judges of the Court of Queen's Bench;

(3.) One other Division shall consist of The Lord Chief Justice of the Common Pleas, who shall be President thereof, and the other Judges of the Court of Common Pleas;

(4.) One other Division shall consist of The Lord Chief Baron of the Exchequer, who shall be President thereof, and the other Barons of the Court of Exchequer;

(5.) One other Division shall consist of the Judge of the Courts of Probate and for Matrimonial Causes and Matters;

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate and Matrimonial Division.

The Queen's Bench, Common Pleas, and Exchequer Divisions shall consist of the number of Judges following and no more, viz.:

The Queen's Bench Division of four Judges;

The Common Pleas Division of three Judges;

The Exchequer Division (from and after the next vacancy in the office of one of the Junior Barons) of three Judges; and

The Probate and Matrimonial Division shall have one Judge.

Any vacancy at the time of the commencement of this Act in the office of Judge of any Court the jurisdiction of which is by this Act transferred to the High Court of Justice or the Court of Appeal, if such office be continued by this Act, may be supplied by the appointment of a new Judge in his place in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Save as by this Act expressly provided, any Judge of any of the said Divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said Divisions, provided, that in the case of an existing Judge, such transfer shall not be without his own consent.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the Division to which the Judge whose place has become vacant belonged, and shall succeed to the duties of such Judge.

Rules of Court to provide for distribution of business.

35. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several Divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or Orders of Transfer, to be made under the authority of this Act; and in the meantime, and

A.D. 1877.

subject thereto, all such causes and matters shall be assigned to the said Divisions respectively, in the manner herein-after provided. In distributing the general business between the Queen's Bench, Common Pleas, and Exchequer Divisions, regard shall be had to any special jurisdiction vested in them respectively, so as to apportion the business fairly between them.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

36. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament by which exclusive jurisdiction, in respect to such causes or matters, has been given to the Court of Chancery, or to any Judges or Judge thereof respectively:

(3.) All matters pending in the Landed Estates Court at the commencement of this Act:

(4.) All matters which would have been within the exclusive cognizance of the Landed Estates Court, or of any Judge or Judges thereof, if this Act had not passed:

(5.) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership or other accounts;

The redemption or foreclosure of mortgages;

The raising of portions, or other charges on land;

The sale and distribution of the proceeds of property subject to any lien or charge;

The execution of trusts, charitable or private;

The rectification, or setting aside, or cancellation of deeds or other written instruments;

The specific performance of contracts between vendors and purchasers of land, including contracts for leases, and also the specific performance of any other contracts in respect of which a Court of Equity decrees performance;

The partition or sale of real estates, including chattels real;

The wardship of infants and the care of infants estates.

All causes and matters included under the heads above numbered (3) and (4) shall be assigned to the Land Judges of the Chancery Division.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas if this Act had not passed.

Provided always, that if and whenever the said Division shall be engaged in the hearing or despatch of any business relating to a parliamentary election which would have been within the exclusive cognizance of the Court of Common Pleas, but only so long as there shall be but three Judges of the Common Pleas Division, the junior Puisne Judge for the time being of the Queen's Bench Division shall be empowered and bound to attend and take part in the hearing and despatch by the Common Pleas Division of such business, and shall, for all the purposes of such business, be a fourth member of the Common Pleas Division.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Probate and Matrimonial Division of the said Court:

(1.) All causes and matters pending in the Court of Probate, or in the Court for Matrimonial Causes and Matters, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or of the Court for Matrimonial Causes and Matters, if this Act had not passed.

A.D. 1877.

Provision as to option for any Plaintiff (subject to Rules) to choose in what Division he will sue.

37. Subject to any Rules of Court, and to the provisions herein-before contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the Divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such Division, and giving notice thereof to the proper officer of the Court: Provided, that

(1.) All interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the Division of the said High Court to which such cause or matter is for the time being attached; and

(2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any Division of the said High Court to which, according to the Rules of Court or the provisions herein-before contained, the same ought not to be assigned, the Court, or any Judge of such Division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the Division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the Division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper Division of the said Court to which such cause or matter ought to have been assigned; and

(3.) Every testamentary or matrimonial proceeding shall be commenced in the Probate and Matrimonial Division, and addressed to the Judge of that Division for the time being:

(4.) Every proceeding in any other matter within the exclusive jurisdiction of the Landed Estates Court before the passing or under the provisions of this Act shall be commenced in the Chancery Division and addressed to the Land Judges of that Division.

Power of transfer.

38. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Directions as to procedure before Land Judges.

39. Every application to appoint a receiver over land, when such land is the subject of a proceeding before the Land Judges, shall be made to the Land Judge to whom such proceeding is attached. In any proceeding before a Land Judge, the Judge shall decide all controversies and questions as to the validity or effect of any deed, instrument, or contract affecting land or any charge or incumbrance thereon, or as to the construction or effect of any devise or bequest of any estate or interest in or of any charge or incumbrance upon, land, which it may be necessary to decide for the purpose of such proceeding, including the validity or effect of any lease or instrument of tenancy affecting land requisite to be ascertained for the due settlement of a rental; and shall take accounts of and administer the assets of any deceased person whenever it may be necessary for a distribution of the purchase money of any land sold before him, provided there shall not be then depending before any of the Judges of the High Court a suit for the administration of such assets; and it shall not be necessary to institute any other cause or matter for any of such purposes. The procedure in such cases shall be settled by Rules of Court, to be made by the Lord Chancellor, with the Land Judges, or either of them, and any person whether already a party to the proceeding or not, who shall have been duly served with notice in writing pursuant to any Rule of Court or order of the Court shall thenceforth be deemed a party to such cause or matter with the same rights in respect of his claim or defence as if he had duly sued or been sued in a suit instituted for the purpose of deciding any such question or controversy.

Sittings in Dublin and on Circuits.

40. Subject to any arrangements which may be from time to time made by agreement between the Judges of the said High Court, the sittings for trials by jury in Dublin, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such

A.D. 1877.

Commission any Ordinary Judge of the Court of Appeal, or any Judge of the Chancery Division appointed after the first of January one thousand eight hundred and seventy-five, or any of Her Majesty's Serjeants-at-Law, or Counsel learned in the law, who, for the purposes of such Commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court: And any person not a Judge of the High Court who shall be sent as a Commissary shall be paid the same amount and in the same manner as such person would have been paid if before the passing of this Act he had been sent as a Commissary, and if he shall be sent in place of a Judge, who, under the provisions of this Act, was bound to go circuit without payment in respect thereof in addition to his salary, then one hundred and fifty pounds shall be deducted from the salary of such Judge: Provided also, that, any law or custom to the contrary, it shall not be necessary in any commission for the trial of crimes and offences in the county of the city and county of Dublin to nominate more than one Judge to preside, nor for more than one Judge to preside under any commission existing at the commencement of this Act.

Provisions of 21 & 22 Vict. c. 27, and of 25 & 26 Vict. c. 46, to apply to this Act.

41. All the provisions with reference to the assessment of the amount of damages, or the trial of questions of fact, by or before the High Court of Chancery in Ireland, which are contained in "The Chancery Amendment Act, 1858," or "The Chancery Regulation (Ireland) Act, 1862," shall apply to the assessment of damages and the determination of questions of fact by or before the Chancery Division of the High Court as constituted by this Act, or any judge thereof, anything in this Act to the contrary notwithstanding.

Rota of Judges for election petitions.

42. The Judges to be placed on the rota for the trial of election petitions for Ireland in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any Rules of Court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the Judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the Judges of such Divisions respectively, as if such Divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the Judges who, at the commencement of this Act, shall be the Judges upon the rota for the trial of such petitions during the then current year shall continue upon such rota for the same period, and in the same manner as if this Act had not passed.

A.D. 1877.

Powers of one or more Judges not constituting a Divisional Court.

43. Any Judge of the High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Divisional Courts of the High Court of Justice.

44. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or more of the Judges thereof. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional Courts for business of Queen's Bench, Common Pleas, and Exchequer Divisions.

45. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all such business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, as, according to the practice now existing in the Superior Courts of Common Law in Ireland, would have been proper to be transacted or disposed of by the Court sitting in Banco, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting

A.D. 1877.

or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court of Justice, and in case of difference among them, in such manner as the majority of the said Judges with the concurrence of either the Lord Chancellor or the Lord Chief Justice shall determine.

Distribution of business among the Judges of the Chancery and Probate Divisions of the High Court.

46. Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business arising out of any cause or matter assigned to the Chancery Division of the said High Court, or out of any testamentary or matrimonial cause or proceeding assigned to the Probate and Matrimonial Division, shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate, and the Court for Matrimonial Causes and Matters respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate, the Court for Matrimonial Causes and Matters, and the Landed Estates Court respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which, after the commencement of this Act may be commenced in the Chancery Division of the said High Court, shall be assigned to one of the Judges thereof, in the same manner as heretofore: Provided that (subject to any Rules of Court, and to the power of transfer) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the Court of Probate or the Court for Matrimonial Causes and Matters, shall be assigned to the Judge of the Probate and Matrimonial Division for the time being, and all matters within the exclusive jurisdiction of the Landed Estates Court shall be assigned to the Land Judges.

Cases and points may be reserved for or directed to be argued before Divisional Courts or Courts of Appeal.

47. Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before any such Court: and any such Court shall have power to hear and determine any such case or point so reserved or so directed to be argued:

Provided that nothing in this Act, or in any rule made under its provisions, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law and as to the evidence applicable to such issues: Provided also, that such right may be enforced by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

Land cases reserved.

48. From and after the commencement of this Act, any person aggrieved by any decision or order upon any question of law, made by any judge or judges of assize under the Landlord and Tenant (Ireland) Act, 1870, or, in the case of the county or the county of the city of Dublin, made by the judges mentioned in that Act in that behalf, may require the judge or judges making such decision or order to reserve such question of law by way of case stated for the consideration of the Court of Appeal; and the same shall thereupon be reserved accordingly in such manner and form as shall be prescribed by rules made in pursuance of the thirty-first section of the said Act.

Provision for Crown cases reserved.

49. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the "further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such Chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Motions for new trials to be heard by Divisional Courts.

50. In proceedings in the Queen's Bench, Common Pleas, and Exchequer Divisions respectively, every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or

A.D. 1877.

by a Judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.

What orders shall not be subject to appeal.

51. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, being costs which by law are left to the discretion of the Court, shall be subject to any appeal, unless by leave of the Court or Judge making such order.

Costs.

52. Subject to the provisions of this Act and of Rules of Court, the costs of and incident to every proceeding in the High Court of Justice and Court of Appeal respectively shall be in the discretion of the Court, but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted on in Courts of Equity: Provided, that (subject to all existing enactments limiting, regulating, or affecting the costs payable in any action by reference to the amount recovered therein), the costs of every action, question, and issue tried by a jury shall follow the event, unless, upon application made, the Judge at the trial or the Court shall for cause shown and mentioned in the order otherwise direct; and any order of a Judge as to such costs may be discharged or varied by a Divisional Court: And provided also, that in all actions for libel where the jury shall give damages under forty shillings, the plaintiff shall not be entitled to more costs than damages.

Where in any proceeding in the High Court of Justice or Court of Appeal the costs of any party to the proceeding are ordered to be paid or borne by another party to the proceeding, or by a fund or estate, those costs shall, if the Court so directs, include, in addition to the costs now allowed on taxation as between party and party, all or any other costs, charges, and expenses reasonably incurred for the purposes of the proceeding; but this enactment shall not apply to any proceeding for the recovery of a penalty.

As to discharging orders made in Chambers.

53. Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as to costs, may be set aside or discharged upon notice by any Divi-

sional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

Provision for absence or vacancy in the office of a Judge.

54. In case in the Chancery Division of the High Court of Justice from the amount of business, or in any Division of the said Court from the absence of a Judge or Judges through illness, it shall be found expedient that some or one of the Ordinary Judges of the Court of Appeal appointed after the passing of this Act should assist in transacting the business of such Division, it shall be lawful for them and him so to do; and while so sitting and acting such Judge or Judges shall have all the power, jurisdiction, and authority of a Judge or Judges of the said High Court of Justice.

Power of a single Judge in Court of Appeal.

55. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than *two* Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Any direction incidental to a proceeding in appeal, not involving the hearing of such decrees, judgments, or orders, final or interlocutory, as aforesaid, may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal.

Constitution of Court of Appeal when hearing Appeals.

56. No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made in a cause or matter heard by himself either sitting alone or with other Judges.

Arrangements for business of Court of Appeal.

57. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal shall be made by and under the direction of the President and the other Judges of the said Court of Appeal.

A.D. 1877.

PART IV.

Trial and Procedure.

Assessors.

58. Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, the High Court or the Court of Appeal may, in any civil cause or matter as aforesaid in which it may think expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such assessors shall be determined by the Court.

Provision as to making of Rules of Court before or after the commencement of the Act.

59. The Lord Lieutenant may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, the Lord Justice of Appeal, the Chief Justice, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron, or any three of them, and of the other Judges of the several Courts intended to be united and consolidated by this Act, or of a majority of such other Judges, make rules, to be styled Rules of Court, for carrying this Act into effect, and in particular for all or any of the following matters; that is to say,

(1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal, including all matters connected with writs, forms of actions, parties to actions, evidence, and mode and place of trial; and

(3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein (including the costs to be allowed to solicitors of the Supreme Court in respect of business transacted in or before any of such Courts or the offices thereof, or the fees, remuneration, and expenses to be allowed to witnesses, or the fees to be payable to or receivable by sheriffs for the discharge of any duties under this Act or in obedience to the order of the Supreme Court, or any division or master thereof,) or relating to the conduct of civil or criminal business coming within the cognizance of the said Courts respec-

tively, for which provision is not expressly made by this Act; and

(4.) For regulating the sittings of judges in chambers, the issuing and hearing of summonses, and the allowance or disallowance of the expense of the attendance of counsel upon such hearings, and generally for the efficient despatch of chamber business under the provisions of this Act; and

(5.) For prescribing, regulating, or doing anything which under this Act may be prescribed, regulated, or done by Rules of Court.

From and after the commencement of this Act, the Lord Lieutenant may at any time, with the concurrence of a majority of the Judges of the Supreme Court present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), by Order in Council alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in the Lord Lieutenant on the recommendation of the Judges herein-before specified before the commencement of this Act.

In making, altering, or annulling Rules of Court in pursuance of this Act, regard shall be had to the Rules of Court for the time being in force under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, so as that the pleading, practice, and procedure in the High Court of Justice and Court of Appeal respectively constituted by this Act shall, so far as may be practicable and convenient, having regard to the difference of the laws and circumstances of the two countries, be the same as the pleading, practice, and procedure in the High Court of Justice and Court of Appeal respectively constituted by the said Acts.

All Rules of Court made in pursuance of this part of this Act shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this part of this Act, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after the time when they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this Act.

The powers to make Rules of Court contained in this section are not to affect special provisions in this Act enabling rules to be made in particular instances.

The Rules contained in the schedule to this Act (which shall be read and taken as part of this Act) shall come into operation

A.D. 1877.

immediately on the commencement of this Act; and as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority herein provided in that behalf, any of them may be altered or varied; but such Rules and also all Rules to be made before the commencement of this Act as herein mentioned shall, for all the purposes of this Act, be Rules of Court capable of being annulled or altered by the same authority by which any other Rules of Court may be made, altered, or annulled after the commencement of this Act.

Circuits and assizes.

60. The Lord Lieutenant, may from time to time, after the commencement of this Act, by Order in Council, rearrange the circuits or reduce their number, and direct what counties and towns shall be upon each circuit.

Winter assizes.

61. "The Winter Assizes Act, 1876," (excepting section 5,) shall from and after the passing of this Act extend to Ireland, and all the powers thereby vested as to England in Her Majesty shall as to Ireland be vested in and may be exercised by the Lord Lieutenant, by and with the advice and consent of the Privy Council in Ireland, and every order of the Lord Lieutenant in Council made in pursuance of the said Act, and published in the Dublin Gazette, shall have the like effect in Ireland as an order in Council made in pursuance of the said Act would have in England, and provision may be made by such order for the hearing and despatch at any winter assizes, as well of criminal business as also of such civil business as may be by such order prescribed.

Rules of Courts of Probate, and for Matrimonial Causes, to be Rules of the High Court.

62. All Rules and Orders of Court which shall be in force in the Court of Probate, and the Court for Matrimonial Causes and Matters respectively, at the time of the commencement of this Act, except so far as they shall by Rules of Court be expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been Rules of Court under this Act.

Criminal procedure, subject to future Rules, to remain unaltered.

63. Subject to any Rules of Court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.

In cases on the Crown side of the Queen's Bench Division a writ of error to the House of Lords may issue in like manner and subject

to like conditions and permission and in respect of like proceedings as such writ would have issued from the Court of Queen's Bench, if this Act had not been passed.

Act not to affect rules of evidence.

64. Nothing in this Act, or in any Rules of Court to be made by virtue hereof, save so far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

65. Save as by this Act, or by any Rules of Court may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, General Orders, or Rules whatsoever, and which are not inconsistent with this Act or any Rules of Court, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.

Additional power as to regulation of practice and procedure by Rules of Court.

66. Where any provisions in respect of the practice or procedure of any courts, the jurisdiction of which is transferred by this Act to the High Court of Justice or the Court of Appeal are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

67. Every General Rule, Order in Council, Rule of Court, and General Order required by this Act to be laid before each House of Parliament, shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of

A.D. 1877.

no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Councils of Judges to consider procedure and administration of justice.

68. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the Court of Appeal: And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. An Extraordinary Council of the said Judges may also at any time be convened by the Lord Chancellor.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

69. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the High Court of Justice and the Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the High Court of Justice or the Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named the reininstead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the High Court of Justice: Provided always, that any provisions of such Acts inconsistent with the provisions of this Act shall be and the same are hereby repealed.

PART V.

Officers and Offices.

Transfer of existing staff of officers to Court of Judicature.

70. The Receiver Master and the Accountant-General in Chancery, and the Masters in the Courts of Common Law, the Clerk of the Crown and Hanaper, the Clerk of the Crown of the Court of Queen's Bench, and the Taxing Masters, Secretaries, Registrars, Clerk of Records and Writs, Examiner in the Court of Chancery, Registrar of the consolidated Nisi Prius Court, Clerks of the Rules and Pleadings and Record Assistants, Chief and other Clerks, Commissioners to take oaths or affidavits, or the acknowledgment of deeds by married women, Stamp Distributors, Messengers, Court and Office Keepers, Hall Porters, Tipstaves, Criers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of or connected with any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, also all persons who were officers of or connected with the late Masters of the Court of Chancery, or their offices, shall, from and after the commencement of this Act, be attached to the Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed; any such officer who is removable by the Court to which he is now attached shall be removable by the Court or Division to which he shall be attached under this Act, or by the majority of the Judges thereof, for the same causes as heretofore.

Provided, however, that the existing Third Assistant in the Writ and Seal Office and the existing Clerk of Errors shall not be entitled to the benefit of this provision, and shall cease to be officers of the High Court upon an order of the Lord Chancellor to that effect without being entitled to compensation.

The existing Registrars, Assistant Registrars, and Clerks to the Registrars in the Chancery Registrars office, and also the existing officers of the three law courts, shall, so long as they continue

A.D. 1877.

officers of the Courts, retain any right of succession secured to them by Act of Parliament, so as to entitle those who are thus secured in their respective offices, or in any substituted offices, to the succession to appointments with similar or analogous duties and with equivalent salaries.

All officers who at the time of the commencement of this Act shall be attached to the Court of Chancery, or any Judge or Master thereof, shall be attached to the Chancery Division of the High Court of Justice; all officers who at the time of the commencement of this Act shall be attached to the Landed Estates Court, or the Judges thereof, shall be attached to the Land Judges of the Chancery Division; all officers who at the time of the commencement of this Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Common Pleas shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Exchequer shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of this Act shall be attached to the Court of Probate and the Court for Matrimonial Causes and Matters shall be attached to the Probate and Matrimonial Division of the said High Court.

All clerks and other officers attached to any existing Judges who under the provisions of this Act shall become a Judge of the High Court of Justice or of the Court of Appeal shall continue attached to such Judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto, and shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed.

The distribution of business among the officers so attached to the said respective Divisions, the duties to be discharged by them, and any re-arrangement connected therewith shall be regulated, controlled, and directed.

If the services of any existing officer attached in manner aforesaid to a Division shall not be required in the Division to which he is attached, it shall be lawful for the Lord Chancellor, with the concurrence of the other Presidents of Divisions, or two of them, by order, to transfer such officer to some other office of the High Court of Justice, or some Division thereof, subject however to the con-

ditions herein-after imposed as to the nature of the duties he is to perform. A.D. 1877.

The following offices shall at dates to be fixed by the Lord Chancellor, with the concurrence of the Treasury, but within two years from the commencement of this Act, be consolidated in manner following: the Taxing Offices of the Common Law Courts and of the Landed Estates Court with the Taxing Office of the Court of Chancery, so as to have but one Taxing Office for the Supreme Court, and the several Courts and Divisions thereof; the Office of Accountant in the Landed Estates Court with the Office of Accountant-General in the Court of Chancery, so as to have but one accounting department for the Supreme Court and all courts and divisions thereof; the Writ and Seal Office of the Law Courts with the Record and Writ Office in Chancery, so as to have but one office out of which all writs and summonses to commence proceedings in the High Court or any Division thereof may issue, and in which the records of all proceedings therein may be preserved; and the Notice Office of the Landed Estates Court with the Notice Office of the Court of Chancery.

Subject to the provisions in this Act as to tenure and salary of existing officers, and as to the discharge by them of analogous duties only, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may, by order, consolidate any other offices of the courts whose jurisdiction is hereby transferred to the Supreme Court in any cases where the union of the existing courts into one Supreme Court shall render it no longer necessary or expedient to retain such offices separate.

The distribution of business in the offices so united and consolidated, and the duties to be discharged by the officers thereof, shall be regulated and directed by Rules of Court.

All other officers and persons (if any) hereby attached to the Supreme Court, for the regulation of whose duties provision has not been herein-before made, shall have their duties defined by the Lord Chancellor.

An existing officer hereby attached to the Supreme Court or any Court or Division thereof shall not be required to discharge any duties which are not either the same as or similar or analogous to those which he performed immediately before the commencement of this Act; and in case of question as to the duties proposed to be imposed upon an officer being similar or analogous, the Lord Chan-

A.D. 1877.

cellor shall decide, having regard to the rank and position previously held by such officer.

The Lord Chancellor may, with the consent of the Treasury, increase the salary of any officer who is by this Act attached to the Supreme Court, or any Court, Division, or Judge thereof, and whose duties are increased by reason of the passing of this Act.

In case it shall appear to the Lord Chancellor that, by reason of the consolidation or abolition of offices under the provisions of this Act, the continuance of the services of any officer holding during good behaviour, or during good behaviour subject to removal for cause by some Court or Judge, is unnecessary, the Lord Chancellor may, with the concurrence of the Treasury, make arrangements for the release of such officer from his duties, and thereupon it shall be in the power of the Treasury to award to such officer such compensation as, having regard to his period of service, to the tenure of the office held by him, the Treasury shall consider just and reasonable: Provided always, where such officer shall have served for any period not exceeding fifteen years, the annual amount so to be awarded shall not be more than one half of the salary and emoluments of the office held by him, and for each year of completed service exceeding fifteen years there shall be awarded in addition one thirtieth part of the salary and emoluments of the office, but in no case shall the sum awarded exceed three fourth parts of the salary and emoluments of such office: Provided also, that in addition to any compensation to be awarded under the foregoing provisions the Lord Chancellor, with the concurrence of the Treasury, may award to any officer having by statute any right of succession to a position of higher rank and emolument such further compensation in respect of such right as, having regard to the circumstances of the case and to the amount awarded under the foregoing provisions, shall appear just and reasonable: Provided also, that no such officer appointed before the passing of this Act shall be so released without his consent.

In every case in which the compensation awarded under such special circumstances, affecting the tenure or position of an officer as are above referred to, shall exceed the amount which might be awarded under the provisions of the seventh section of the Superannuation Act, 1859, without a special minute being laid before Parliament, the compensation shall be awarded by special minute of the Treasury, stating the reasons for it, and a copy of the minute shall be laid before Parliament within fourteen days of the date of the minute, if Parliament be then sitting, or if not, then within fourteen days of its next meeting.

A.D. 1877.

Any existing officer attached to any existing Court or Judge whose jurisdiction is abolished or transferred by this Act, and whose emoluments or statutory rights of promotion or succession are affected by the passing of this Act, shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Appointment of future officers of Supreme Court.

71. Subject to the provisions in this Act contained as to existing officers of the courts whose jurisdiction is hereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, shall within two years from the commencement of the Act, determine what officers, clerks, or other persons holding subordinate positions, requisite for the permanent organisation of the official staff of the Supreme Court, and every court and division thereof, shall be retained or employed; and may, with the like concurrence, abolish any unnecessary office, or reduce, or in case of additional duties increase, the salary of an office, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge: Provided always, that if and when under the provisions of this Act any office shall be abolished to which any junior officer shall have by statute a direct or qualified right of succession, such compensation shall be given to such last-mentioned officer in respect of the loss of such right of succession as to the Lord Chancellor, with the concurrence of the Treasury, shall seem just.

When a vacancy occurs in any office after the passing of this Act, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor given with the concurrence of the Treasury; and further the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of December one thousand eight hundred and seventy-nine, and may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office.

Subject to the provisions of this Act preserving their patronage to existing Judges, all offices which may not be abolished in manner aforesaid shall continue, and shall when vacant be filled up in manner following:

A.D. 1877.

All junior clerkships in the High Court of Justice shall be filled up by open competition.

The Lord Chancellor shall, with the concurrence of the Civil Service Commissioners, make regulations as to the qualification of candidates, and the subjects of examination.

All officers attached to the High Court, or the Chancery Division thereof, who have been heretofore appointed by the Master of the Rolls or Vice-Chancellor, save those appointed by competition as aforesaid, shall continue, while so attached, to be appointed by the Master of the Rolls and Vice-Chancellor and their successors respectively in the same manner and on the same conditions and occasions as heretofore.

All officers of the Chancery Division attached to the Land Judges, heretofore appointed by such Judges, or who under the provisions of this Act shall be attached to the Land Judges, save those appointed by competition as aforesaid, shall be appointed by them with such approval as heretofore.

All other officers attached to the Divisions of the High Court shall, save those appointed by competition as aforesaid, be appointed for each such Division by the President thereof.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Subject to these provisions, all officers assigned to perform duties with respect to the Supreme Court of Judicature generally, or attached to the High Court of Justice generally, or the Court of Appeal, and all Commissioners to take oaths or affidavits in the Supreme Court, or for whose appointment other provision is not expressly made in this section, shall be appointed by the Lord Chancellor.

Any statutable power existing at the passing of this Act to enable any officer or officers of any court to appoint to any office, or to employ any persons in duties appertaining to any office, is hereby repealed, and the right of appointing to such offices, if they shall be continued, shall vest, in the case of offices attached to Divisions, in the Presidents of the Divisions, and in all other cases in the Lord Chancellor, but no vacancy in any of such offices shall be filled without the concurrence of the Treasury. Nothing herein contained shall affect or be taken as affecting the right of appointment at present vested in the district registrars of the Court of Probate, under the Act twentieth and twenty-first Victoria, chapter seventy-nine, section one hundred and fourteen.

A.D. 1877.

Any qualification required for appointment to any office by any statute in force at the commencement of this Act shall continue.

Any officer of the Supreme Court of Judicature, or of the Court of Appeal, or of the High Court, or of any Division or Judge thereof (other than such officers attached to the person of a Judge as are removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court of Judicature, and of the Court of Appeal and of the High Court of Justice, over all or any of the officers attached to the said Courts, or any of them generally, with respect to any duties to be discharged by such officers respectively, may be exercised by the Lord Chancellor, and over the officers attached to any Division of the High Court by the President of such Division, with respect to any duties to be discharged by them respectively.

Powers of Commissioners to administer oaths.

72. Every person who is or shall be authorised to administer oaths in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice, shall be a commissioner to administer oaths in all causes and matters whatsoever which may, from time to time, be depending in the said High Court or in the Court of Appeal; and every such commissioner, if a solicitor, is hereby authorised to exercise his functions as such commissioner in any part of Ireland without regard to any limit of place specified in his commission. And all answers, disclaimers, examinations, and affidavits in causes or matters depending in any of the courts whose jurisdiction is hereby transferred to the High Court of Justice or Court of Appeal, or in the said High Court of Justice or Court of Appeal, and also acknowledgments required for the purpose of enrolling any deed in any of the said courts, or affidavits to memorials for the purpose of registering deeds in Ireland, shall and may be sworn and taken in England or Scotland, or the Isle of Man, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any judge, court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice consuls in any foreign parts out of Her Majesty's dominions; and the judges and other officers of the several divisions of the said High Court or Court of Appeal, and also the registrar and other officers of the Office for the Registry of Deeds in Ireland shall take judicial

A.D. 1877.

notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice consul attached, appended, or subscribed to any such answers, disclaimers, examinations, and affidavits, acknowledgments, memorials, or other documents to be used in the said High Court, or in any of the divisions thereof, or in the Court of Appeal, or in the Office for the Registry of Deeds in Ireland.

Receiver Master.

73. After the passing of this Act no successor to the existing Receiver Master shall be appointed; and it shall be lawful for the Lord Lieutenant, with the consent of the Lord Chancellor, to release the existing Receiver Master from the further discharge of his duties in the same manner, and upon the same terms, as the Lord Chancellor was empowered to release the other Masters by the Chancery (Ireland) Act, 1867; and upon the death, resignation, or release of such existing Receiver Master, the powers and duties in lunacy matters vested in and performed by the Receiver Master other than those connected with the management of land shall be exercised and performed by the Lord Chancellor, and the officers attached to him according to the course of procedure in the Chancellor's court and offices, and the powers and duties vested in and performed by such Receiver Master in reference to the management of landed estates, and the supervision and control of receivers over the same, shall be exercised by the Land Judges, and all matters and business which shall be then pending in the office of such Receiver Master in reference to receivers appointed over any estate by or in pursuance of any order of the Court of Chancery, or any of the Judges or Masters thereof, or of the Lord Chancellor entrusted by the Queen's Sign Manual with jurisdiction in Lunacy, and the accounting of such receivers and the letting and management of the estates over which any such receiver shall have been appointed shall be thereupon transferred to the said Land Judges, and shall thenceforth, subject to any Rules of Court to be made by the Lord Chancellor, with the concurrence of the Land Judges or either of them, be prosecuted and conducted before such Judges or one of them in the same manner as the same would have been prosecuted or conducted before the Receiver Master if this Act had not been passed; and all matters and business, other than as aforesaid and other than the audit of public accounts, which shall be then pending in the office of such Receiver Master, shall, subject to Rules of Court and to the power of transfer, be distributed among the Judges of the Chancery Division of the said High Court as the Lord Chancellor, with the concurrence of any two of the Judges of the said Division, shall direct.

A.D. 1877.

Any references to appoint receivers over land which may be made by any Judge of the High Court of Justice, including the Lord Chancellor entrusted in Lunacy as aforesaid, after the death, resignation, or release of said Receiver Master shall be made to the said Land Judges, or one of them, and the accounting of the receivers appointed either under such references or by the Land Judges themselves, or by any other Judge, and the control of such receivers, and the management of the estates over which they shall be appointed, shall be exercised by the Land Judges.

Provided always, that nothing herein contained shall prevent any Judge, or the Lord Chancellor intrusted in Lunacy as aforesaid, from himself appointing a receiver over land, or over personal estate other than land, in any case in which he shall think it expedient to do so, and in any such case the Judge may, if he shall think it expedient, and in all cases in which he shall appoint a receiver over personal estate other than land he shall, by order direct that all subsequent proceedings with regard to such receiver shall be taken in his own Court, and thereupon all such proceedings shall be taken before such Judge or his officers.

Appeals from any orders made by the said Land Judges with regard to any matters connected with Receivers or the management of land shall lie to the Court of Appeal and not to the Court or Judge by whom reference to them to appoint or take the accounts of a Receiver shall have been made, and no order so made shall require to be confirmed by such last-mentioned Court or Judge.

Subject to any Rules of Court and unless the Court or Judge by whom any such reference shall be made shall otherwise order, all sums of money received by any receiver shall, after payment of or providing for the necessary outgoings of and allowances in respect of the estate over which he shall be so appointed, be lodged to the credit of the cause or matter in which the reference to the Land Judges shall have been made, or shall be paid by said Receiver according to the orders of the Judge to whom such cause or matter is attached.

The jurisdiction to audit certain public accounts (including accounts of the Commissioners of Charitable Donations and Bequests in Ireland), and every other jurisdiction (if any) not in reference to causes, matters, or proceedings in Chancery, now vested in the Receiver Master, shall (unless the Lord Lieutenant in Council shall otherwise direct), after the death, resignation, or release of

A.D. 1877.

the existing Receiver Master, vest in and be exercised by the Local Government Board for Ireland. It shall be lawful for the Lord Lieutenant in Council at any time and from time to time after the passing of this Act to make such rules and regulations as to the Lord Lieutenant in Council shall seem fit for providing for the complete, proper, and efficient exercise by the Local Government Board, or by such other authority or authorities, or person or persons, as by the Lord Lieutenant in Council may be appointed in that behalf, of the jurisdiction or jurisdictions aforesaid.

The officers connected with the office of the Receiver Master shall (subject to the provisions herein-after contained) be transferred and attached to the Land Judges, and the said officers shall be employed in duties similar or analogous to those which they at present discharge; and they shall hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, and such salaries and pensions shall be chargeable upon and payable out of the same funds as if this Act had not been been passed.

Notwithstanding anything herein-before provided, it shall be lawful for the Lord Lieutenant in Council to transfer and attach to the Local Government Board, or to any other authority or person appointed to exercise any jurisdiction now vested in the Receiver Master, any of the said officers heretofore engaged in the performance of duties connected with any jurisdiction which shall, under or in pursuance of this Act, be vested in such board, authority, or person, and to require any of the said officers to perform such duties connected with the said jurisdiction, and similar or analogous to those which they at present perform, in such manner, and subject to such authority and control, as the Lord Lieutenant in Council may prescribe, and also to require any of the officers hereby transferred and attached to the Land Judges to give assistance, by the discharge of any duties similar or analogous to those which they at present discharge, to the Local Government Board or any other authority or person exercising any jurisdiction which shall under or in pursuance of this Act be vested in such board, authority, or person, at such times, in such manner, and subject to such control and conditions as the Lord Lieutenant in Council may prescribe.

Provided also, that all the powers relating to existing officers of the courts and to the reorganization and new arrangement of offices herein contained shall also apply to the officers of the Receiver Master.

General orders shall be made by the Lord Chancellor with the concurrence of the Land Judges, or either of them, to regulate the practice and procedure connected with the matters the subject of this section.

The duties imposed upon the Land Judges by this section (so long as there shall be two such Judges) shall be discharged by the junior Judge for the time being; and in distributing the other business of the Land Judges between them, regard shall be had to this provision.

The Lord Lieutenant, with the consent of the Lord Chancellor, may, if he shall think fit before the commencement of this Act, exercise the powers by this section conferred with respect to the release of the Receiver Master from the further discharge of his duties, and in such case or in case of vacancy in the office before the commencement of this Act, the several provisions in this section contained shall take effect, and such of the same as relate to the Land Judges shall be applicable and shall apply to the Judges of the Landed Estates Court, and such as relate to the Judges of the Chancery Division shall be applicable and shall apply to the Judges of the Court of Chancery.

Salaries and pensions of officers.

74. There shall be paid to every salaried officer appointed in pursuance of this Act such salary out of moneys provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.

An officer attached to the person of a Judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Clerks of Assize and Nisi Prius.

75. Clerks of Assize and Nisi Prius on circuit and at winter assizes may be appointed and paid in the same manner as heretofore. Clerks of Nisi Prius in Dublin may be appointed by the existing Chief Judges of the Queen's Bench, Common Pleas, and Exchequer Divisions, and shall be paid as heretofore; but such right of appointment shall not be continued to their successors, and other

A.D. 1877.

provisions shall be made for the discharge of the duties now discharged by such clerks, under the provisions of this Act relating to future offices of the High Court.

Solicitors and attorneys.

76. From and after the commencement of this Act, all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called Solicitors of the Court of Judicature, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called Solicitors of the Court of Judicature and shall be admitted by the Lord Chancellor, and shall, so far as circumstances will permit, be entitled as such solicitors to the same privileges and be subject to the same obligations as if this Act had not passed.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be Officers of the Court of Judicature; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any Division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

PART VI.

Jurisdiction of Inferior Courts.

Rules of to apply to inferior Courts.

77. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in Ireland, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts. And Rules of Court as to pleading, practice, and procedure, empowered to be made by Order in Council as herein-before provided, shall be applicable to Local Courts of Record in Ireland, or to such one or more of them, and to such extent and in such manner only as the said order may direct.

A.D. 1877.

PART VII.

Miscellaneous Provisions.

Transfer of books and papers to Court of Judicature.

78. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court of Judicature, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Court making such order.

Saving as to circuits, &c.

79. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Court of Judicature who are now officers of the Courts of Common Law in Ireland, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to Lord Chancellor.

80. This Act, except so far as herein is expressly directed, shall not affect the office of Lord Chancellor, nor the rank, salary, or pension attached to such office; and the officers in the Lunacy Department, and the officers personally attached to or connected with the Lord Chancellor, shall continue attached to him in the same manner as if this Act had not passed; and all duties which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Court of Judicature, and by his successors. It shall be in the power of the Lord Chancellor, with the concurrence of the Treasury, to abolish, or alter the duties and designation of any offices whether in the Lunacy Department or attached to himself, and to fix the salaries of such as shall be retained, but so that no existing officer holding office during good behaviour shall receive a less salary than heretofore, or hold office otherwise than he did before.

Provisions as to Great Seal being in commission.

81. When the Great Seal of Ireland is in commission, the Lords Commissioners shall represent the Lord Chancellor for the

A.D. 1877.

purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

PART VIII.

Fixing and collection of fees in High Court and Court of Appeal.

82. The Lord Chancellor, with the advice and consent of the other Presidents of the Divisions of the High Court, or any one of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and per-centages to be taken in the High Court of Justice or in the Court of Appeal, or any office connected therewith, or by any officer of those courts or the Lord Chancellor, or other judge of those courts which officer is paid wholly or partly out of public moneys, and may from time to time by order increase, reduce, or abolish all or any of such fees and per-centages, and appoint new fees and per-centages, to be taken in the said courts or offices or any of them, or by any such officer as aforesaid.

All such fees and per-centages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated Fund, and with respect thereto the following rules shall be observed:

(1.) The fees and per-centages shall (except so far as the order may otherwise direct) be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by this order:

(2.) Such stamps shall be impressed or adhesive, as the Treasury may from time to time direct:

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of adhesive stamps, and for keeping accounts of such stamps:

(4.) Any document which ought to bear a stamp in pursuance of this Act, or any order made thereunder, shall not be

received, filed, used, or admitted in evidence unless and until it is properly stamped within the time prescribed by the rules under this section regulating the use of stamps, but if any such document shall, through mistake or inadvertence, be received, filed, or used without being properly stamped, the Lord Chancellor or the court may, if he or it shall think fit, order that the same be stamped as in such order may be directed; and on such document being stamped accordingly, the same, and every proceeding relating thereto, shall be as valid as if such document had been properly stamped in the first instance; provided that no document shall be stamped as aforesaid contrary to the provisions of any other Act of Parliament for the time being in force, nor without payment of any penalty prescribed by any such Act:

(5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act, and under any orders made in pursuance thereof, as the Treasury may from time to time direct, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.

(6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees and per-centages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but subject to the provisions of any order made in pursuance of this section, the existing fees and per-centages shall continue to be taken and accounted for in the existing manner. All orders made in pursuance of this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

A.D. 1877.

PART IX.

Unclaimed Dividends in Bankruptcy.

Amendment of the Irish Bankrupt and Insolvent Act, 1857, with respect to the unclaimed dividend account.

83. From and after the passing of this Act, sections eighty-four, and two hundred and ninety-seven of the Irish Bankrupt and Insolvent Act, 1857, shall be and the same are hereby repealed, and the following provisions shall thereupon be in force and have effect:

As soon as may be after the passing of this Act, the Governor and Company of the Bank of Ireland shall, upon an order of the Lord Chancellor to be made in that behalf, transfer to the account of the Commissioners for the Reduction of the National Debt at the Bank of England, all Government securities standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankruptcy and Insolvent Act, 1857.

As soon as the said Government securities have been so transferred, the Treasury shall by warrant direct the Governor and Company of the Bank of England to cancel such securities in their books.

The cash standing in the books of the Bank of Ireland at the time of the passing of this Act to the credit of an account called "the Unclaimed Dividend Account," under the Irish Bankrupt and Insolvent Act, 1857, or so much of the same as shall be determined by the Treasury, and all dividends and all moneys the produce of any bankrupt, arranging debtors, or insolvent estate which shall from time to time after the passing of this Act be paid into or transferred to the credit of the "Unclaimed Dividend Account" under the provisions of section two hundred and ninety-five of the Irish Bankrupt and Insolvent Act, 1857, and which have remained unclaimed for a period of not less than five years from the time on which the same have been respectively paid into or transferred to the said account, shall be from time to time paid to the account of the Commissioners for the Reduction of the National Debt, in such manner as the Treasury may direct. The Commissioners for the Reduction of the National Debt shall apply all cash transferred to their account in pursuance of this section in reduction of the National Debt in the same manner as the moneys issued to them under the Sinking Fund Act, 1875.

Where any Court having jurisdiction in the matter of bankruptcy is satisfied that any person claiming is entitled to any dividend or other payment out of the moneys carried to the account of the said Commissioners under the provisions of this section, such Court may

order payment of the same in like manner as it might have done if the same had not been carried to the said last-mentioned account. In case the moneys standing to the credit of the said Unclaimed Dividend Account shall at any time be insufficient to meet the payments to be made out of the same, the Treasury shall issue out of the Consolidated Fund, or out of the growing produce thereof, such sum as may appear to them to be necessary to provide for the said payments.

All salaries, allowances, damages, costs, and expenses before the passing of this Act charged on and payable out of the said Unclaimed Dividend Account, or the interest and profit arising therefrom, shall, from and after the passing of this Act, be paid out of moneys to be provided by Parliament for such purpose.

Application to extend receiver shall be made by summary motion to a Land Judge unless otherwise ordered by Judge.

84. When a receiver is appointed over land, either by a Land Judge or by any other Judge of the High Court of Justice having power to appoint the same, it shall not be necessary for any party claiming to be entitled to or interested in the rents of the lands over which the receiver shall have been appointed, to file any bill or institute any other cause or proceedings to have the receiver extended to his claim, but such party may apply, by summary motion, to a Land Judge to have the receiver extended to his claim; and, on the hearing of such application, the Judge may either grant the application or order a bill to be filed, or other proceeding to be instituted for the purpose of ascertaining the rights of the party applying, and the costs of a suit, cause, or other proceeding, the object of which shall be the taking an account on foot of any mortgage or other security affecting land, and the extension of a receiver already appointed to the matter of said suit, cause, or other proceeding, shall not be allowed, unless such suit, cause, or other proceeding shall have been commenced by direction of one of the Land Judges.

The Superior Courts may remit to the Civil Bill Court ejectments brought in High Court of Justice.

85. On the application of the defendant in an ejectment on the title or for nonpayment of rent brought by a landlord against a tenant in the High Court, when the ejectment could be tried in the Civil Bill Court, the Court may remit the ejectment to be tried in the Civil Bill Court, if the Court shall be of opinion that the ejectment should more properly be tried there, and not unreasonably delayed.

A.D. 1877.

PART X.

Final Appeal.

Final appeal to the House of Lords.

86. All decisions, judgments, decrees, or orders of the Court of Appeal shall be subject to appeal to the House of Lords, in the cases and under the conditions in and under which the like decisions, decrees, judgments, or orders of the Court of Appeal in Chancery in Ireland, or of the Court of Exchequer Chamber in Ireland, would have been subject to appeal to the House of Lords or to the Queen in Council if this Act had not been passed, or as may be directed by any Act of Parliament affecting the Appellate jurisdiction of the House of Lords, or any powers therein contained.

Except as herein-before provided with respect to error in certain cases on the Crown side of the Queen's Bench Division, error or appeal from any judgment, decree, or order, subsequent to the commencement of this Act, of the High Court of Justice, or any Division or Judge thereof, or of the Courts of Admiralty or Bankruptcy, or any Judge of the same respectively, may be brought only to the Court of Appeal constituted by this Act, and not directly to the House of Lords or Queen in Council, any previous law or usage to the contrary notwithstanding.

Nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords, or to the Queen in Council, from any prior judgment or order of any Court, whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

SCHEDULE.

The following are the Rules referred to in the fifty-seventh section of this Act:—

Form of Action and Summons.

(Form of action in High Court.)

1. All actions which have hitherto been commenced by writ of summons and plaint in the Superior Courts of Common Law in Ireland, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, shall be instituted in the High Court of Justice by a proceeding to be called an action.

All other proceedings in and applications to the High Court may, subject to rules of court, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

Writ of Summons.

(Actions to be commenced by writ.)

2. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

3. Every writ of summons and the indorsement thereon may be in one of the forms herein-after referred to, and any costs incurred by the use of any more prolix or other forms of writs or of indorsements thereon than the forms herein-after referred to shall be borne by the party using the same, unless the court shall otherwise prescribe.

4. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of Ireland.

5. The indorsement of claim shall be made on every writ of summons before it is issued.

A.D. 1877.

6. In the indorsement it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may, by leave of the court or judge, amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief. If none of the forms herein-after referred to shall be applicable to the case, such other similarly concise form may be used as the nature of the case may require.

7. Writs of summons shall be prepared by the plaintiff or his solicitor in such manner as shall be directed by rules, and shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

8. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

9. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, in such manner as shall be directed by rules.

10. Except as otherwise provided by this Act, all writs of summons shall be served in the same manner respectively as process from the court whose jurisdiction is transferred to the High Court might have been served if this Act had not been passed, and the High Court shall have the same power of directing substitution of service, or that any service already made should be deemed good, or that notice should be substituted for service, as might have been exercised by the said courts respectively if this Act had not been passed.

11. Service of a writ of summons to recover possession of land may be made in the same manner as a summons and plaint in ejectment might have been served if this Act had not been passed.

Interpleader.

12. The procedure and practice used before the passing of this Act with respect to interpleader by Courts of Common Law in Ireland shall apply to all the Divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

Appearance.

13. The defendant shall be bound to appear to the writ of summons at such time and in such manner as may be directed by rules.

14. It shall not be necessary for the defendant on entering an appearance to any writ of summons to file any defence or answer thereto. He shall enter an appearance by delivering to the proper officer a memorandum in writing, dated on the day of delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person.

The solicitor of a defendant appearing by a solicitor shall state in such memorandum his registered residence.

A defendant appearing in person shall state in such memorandum his address, and a place to be called his address for service.

15. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the court or a judge, on the application of the plaintiff.

16. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

17. Any person not named as a defendant in a writ of summons for the recovery of land may, by leave of the court or judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

18. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

Parties.

19. No action shall be defeated by reason of the misjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by rules, and on such terms as may appear to the court or a judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effctually and completely to

A.D. 1877.

adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in such manner as may be prescribed by rules or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

20. When there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

Pleading.

21. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall, within such time and in such manner as may be directed by rules, deliver to the defendant after his appearance a statement of his complaint and of the relief or remedy to which he claims to be entitled. The defendant shall, within such time and in such manner as may be directed as aforesaid, deliver to the plaintiff a statement of his defence, set off, or counter claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set off, or counter claim. Such statements shall be as brief as the nature of the case will admit, and the court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

22. A defendant in an action may set off or set up by way of counter claim against the claims of the Plaintiff, any right or claim, whether such set off or counter claim sound in damages or not, and such set off or counter claim shall have the same effect as a statement of claim in a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or judge may, on the application of the plaintiff before trial, if in the opinion of the court or judge such set off or counter claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

23. Every pleading shall, unless when otherwise provided by rules, contain as concisely as may be, a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into

paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures, and not in words. Signature of counsel shall not be necessary.

24. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief; and the same rule shall apply to any counter claim made, or relief claimed, by the defendant in his statement of defence. If the plaintiff's claim be for discovery only, the plaintiff's claim shall show it.

25. It shall not be sufficient for a defendant, unless where otherwise provided by rules, in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by a way of counter claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

26. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds, or otherwise.

27. Where in any action it appears to a judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the judge.

28. The court or a judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties; and all parties shall have also such further powers of amendment as may be prescribed by rules.

29. A demurrer to any statement may be filed in such manner and form as may be prescribed by rules.

30. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence, or by leave of the court or a judge at any later time, pay into court a sum of money by way

A.D. 1877.

of satisfaction or amends. Payment into court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

31. The parties may, as may be directed by rules, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the court.

New Trial Motions.

32. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such court that such wrong or miscarriage affects part only of the matter in controversy, the court may give final judgment as to part thereof, and direct a new trial as to the other part only, and a new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

Appeals.

33. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by such notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

34. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

35. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together

with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

36. It shall not under any circumstances be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the court below should be varied, he shall, within such time as may be prescribed by rules, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may in the discretion of the court be ground for an adjournment of the appeal, or for a special order as to costs.

37. The forms of writs and pleadings referred to in these rules are the forms prescribed in the several appendices to "The Supreme Court of Judicature Act, 1875."

Exceptions from the Rules.

38. Nothing in these rules shall affect the practice or procedure in any of the following causes or matters:—

Criminal proceedings.

Proceedings on the Crown side of the Queen's Bench Division.

Proceedings on the Revenue side of the Exchequer Division.

Proceedings in the Probate and Matrimonial Division.

Proceedings before the Land Judges of the Chancery Division.

Supreme Court of Judica ture (Ireland).

A

B I L L

[AS AMENDED IN COMMITTEE AND ON RE-COMMITMENT

For the constitution of a Supreme Court Judicature, and for other purposes relatin to the better Administration of Justice, Ireland.

(Prepared and brought in by Mr. Solicitor-General for Ireland and Sir Michael Hicks-Beach.)

Ordered, by The House of Commons, *to be Printed,* 21 *July* 1877.

[Bill 260.]

Under 9 *oz.*

2